

Chapter 3

Evaluation of the Haines Consolidation Proposal

A. Introduction

State law (AS 29.06.130[a]) provides that the Local Boundary Commission *may* approve the Petition (with or without amendments and/or conditions) *if* the Commission determines that the consolidation proposal (as may be amended or conditioned) meets the following tests:

- that it conforms to applicable principles of local government set out in Alaska's Constitution;
- that it complies with the statutory standards for consolidation;
- that it satisfies the standards for consolidation under the Commission's regulations; and
- that it is in the best interests of the state.

If the Commission determines that the Petition does not meet all of those four tests, the Petition must be denied.

The constitutional, statutory, and regulatory standards relate to the following eleven issues:

- community of interests;
- population;
- boundaries;
- resources;
- borough classification;
- civil and political rights;
- transition;
- maximum local self-government;
- minimum of local governments;
- constitutional provisions relating to cities and service areas; and
- best interests of the state.

These standards are examined in Sections B – L of this chapter.

B. Standards Relating to Community of Interests

1. Standards Established in Law.

Article X, § 3 of Alaska's Constitution provides in relevant part:

The entire State shall be divided into boroughs, organized or unorganized. They shall be established in a manner and according to standards provided by law. The standards shall include population, geography, economy, transportation, and other factors. Each borough shall embrace an area and population with common interests to the maximum degree possible...

In addition, AS 29.05.031(a)(1) states, in relevant part, that the population of the proposed consolidated borough must be "interrelated and integrated as to its social, cultural, and economic activities."



The Haines airport serves a vital role in the transportation and economic sectors of the community.

3 AAC 110.045(a) lists four factors that the Commission may consider in making its determination whether the population of the proposed borough is interrelated and integrated as to its social, cultural, and economic activities. These are: (1) the compatibility of urban and rural areas within the proposed borough; (2) the compatibility of economic lifestyles, and industrial or commercial activities; (3) the existence throughout the proposed borough of customary and simple transportation and communication patterns; and (4) the extent and accommodation of spoken language differences throughout the proposed borough. 3 AAC 110.045(a) also allows the Commission to consider other relevant factors.

In addition, AS 29.05.031(a) (4) states that the proposed consolidated borough must have

the “land, water, and air transportation facilities [to] allow the communication and exchange necessary for the development of integrated borough government.”

3 AAC 110.045(c) is similar to, but more specific than, AS 29.05.031(a) (4). It lists four factors that the Commission may consider in making its determination concerning communication and exchange. These are (1) transportation schedules and costs; (2) geographical and climatic impediments; (3) telephonic and teleconferencing facilities; and (4) public electronic media. The regulation also allows the Commission to consider other relevant factors. Further, 3 AAC 110.045(c) provides for consideration of communications media in terms of allowing for adequate communications and exchange necessary to develop an integrated borough government.

3 AAC 110.045(b) states that, absent a specific and persuasive showing to the contrary, the Commission will presume that a sufficient level of interrelationship cannot exist unless there are at least two communities in the proposed consolidated borough.

3 AAC 110.045(d) states that absent a specific and persuasive showing to the contrary, the Commission will presume that communications and exchange patterns are insufficient unless all communities within the proposed consolidated borough are either connected to the seat of the proposed borough by a public roadway, regular scheduled airline flights on at least a weekly basis, a charter flight service based in the proposed borough, or sufficient electronic media communications.

2. Application of the Standards to the Haines Consolidation Proposal.

..... a. Presumptions that the standards are met.

There are four particular circumstances that create a strong presumption that the community of interests standards are met. These are addressed below.

(i) Many of the fundamental aspects of the community of interests standards were in place prior to the incorporation of the Haines Borough, others have been in place for many years since.

The constitutional standard in Article X, § 3 noted above has not changed since it went into effect January 3, 1959. Moreover, the statu-

tory standards in AS 29.05.031(a)(1) and AS 29.05.031(a)(4) are substantially the same as borough incorporation standards first established in 1961.³¹

The Haines Borough was incorporated on August 29, 1968, nearly ten years after Alaska's Constitution took effect and more than seven years after statutory standards similar to those in place today in AS 29.05.031(a)(1) and AS 29.05.031(a)(4) were first enacted by the Alaska State legislature.

In 1975, the Haines Borough extended its boundaries to the south by annexing approximately 420 square miles. In 1978, the Haines Borough annexed the former military petro-

leum distribution facility at Lutak Inlet. The current boundaries of the Haines Borough have remained unchanged for the past twenty-three years.

The twenty-three-year-old boundaries of the Haines Borough are identical to the boundaries of the proposed consolidated borough. Thus, the existing community of interests of the Haines Borough is identical to that of the proposed consolidated City and Borough of Haines.

The standards set out in 3 AAC 110.045(a)-(d) have been in place since 1991.³² While those standards were adopted subsequent to the incorporation of the Borough and also after its last boundary change, the standards have still been in place for ten years.

³¹ AS 07.10.030(1), enacted by Chapter 146, SLA 1961, provided in relevant part that, "The population of the area proposed for incorporation shall be interrelated and integrated as to its social, cultural, and economic activities." AS 07.10.030(4) provided in relevant part, "The transportation facilities in the area proposed for incorporation shall be of such a unified nature as to facilitate the communication and exchange necessary for the development of integrated local government and a community of interests. Means of transportation may include surface (both water and land) and air. Areas which are accessible to other parts of a proposed organized borough by water or air only may not be included within the organized borough unless access to them is reasonably inexpensive, readily available, and reasonably safe. In considering the sufficiency of means of transportation within a proposed organized borough, existing and planned roads and highways, air transport and landing facilities, boats and ferry systems, and railroads, shall be included."

³² The borough incorporation standards adopted as regulations by the Local Boundary Commission were renumbered from Title 19, Chapter 10 of the Alaska Administrative Code to Title 3, Chapter 110 in October 1999 in accordance with Chapter 58, SLA 1999.

The circumstances outlined here create a strong presumption that the referenced standards in the Constitution, statutes, and regulations are satisfied.

(ii) The Haines Borough Assembly and Council of the City of Haines affirmed that the community of interests standards were met in 1998.

Both the Haines Borough Assembly and the Haines City Council concluded in 1998 as follows:³³

...the area and population of the prospective consolidated home rule Haines Borough share common interests to the maximum degree possible...

...the social, cultural and economic characteristics and activities of the people in the prospective home rule Haines Borough are interrelated and integrated...

...the communications media and the land, water and air transportation facilities throughout the prospective consolidated home rule Haines Borough allow for the level of communica-

tions and exchange necessary for an integrated borough.

The declarations made three years ago by the local governing bodies build on the presumption that the referenced standards in the Constitution, statutes, and regulations are satisfied.

(iii) The Local Boundary Commission concluded that the community of interests standards were met in 1998.

In the 1998 consolidation proceedings, the Local Boundary Commission concluded as follows regarding the community of interests standards:³⁴

...compatibility exists between urban and rural areas of the Haines Borough in matters which include economic lifestyles, and commercial activities. Further, there is extensive opportunity for communication and exchange among the residents of the Borough. In addition, while the Haines Borough may lack multiple communities, this should not be a barrier

to consolidation. The Commission concludes, therefore, that the proposal to consolidate the local governments in Haines satisfies the provisions and standards of Article X, Section 3 of the constitution, AS 29.05.031(a)(1), and 19 AAC 10.045(a) and (b).³⁵

...the Commission finds that the area within the Haines Borough has an impressive and effective system of transportation and communication. The Commission concludes, therefore, that the transportation facilities, media, and other communications facilities allow the exchange necessary for development of integrated borough government in Haines in full satisfaction of the standards set out in AS 29.05.031(a)(4) and 19 AAC 10.045(c) and (d).

There is no evidence in this proceeding that factors relating to the community of interests standards have changed in any substantive fashion so as to render the Commission's 1998 determination invalid today.

³³ Haines Borough Resolution # 442 and City of Haines Resolution No. 97/98-30.

³⁴ Local Boundary Commission, *Statement of Decision in the Matter of the March 31, 1998 Petition for Consolidation of the City of Haines and the Haines Borough*, (hereinafter "1998 Haines Consolidation Decision") pages 8 and 9, August 21, 1998.

³⁵ 19 AAC 10.045 has since been renumbered as 3 AAC 110.045.

(iv) The Haines Borough does not assert that the Petition fails to satisfy the community of interests standards.

Lastly, the Respondent Haines Borough does not assert that the pending Petition fails to meet the community of interests standards set out in Article X, § 3 of the Constitution, AS 29.05.031(a)(1), AS 29.05.031(a)(4), and 3 AAC 110.045(a)-(d).

•••••
b. Evidence in the Current Proceeding Demonstrates Satisfaction of the Standards.

The written record in this proceeding provides further evidence that a strong community of interests exists within the proposed consolidated borough. The Petition states as follows regarding this standard:³⁶

With the exception of a few families who reside at Excursion Inlet, Mud Bay, and Chilkat Lake, almost the entire population of the Haines Borough resides on the road system within the Chilkat River Valley... While some social and lifestyle distinctions may be observed, and are expressed by residents, many other factors create common ties between residents.

The Haines Borough, like other regional governments, represents social, political and economic diversity within its boundaries. Overall, the borough can be characterized as rural. While some residents may note distinctions between the outlying areas of the borough and the City of Haines in terms of population density and levels of government regulation, for example, the large area and relatively low population of the borough underscores its predominantly rural character...

The City of Haines is the commercial, transportation and government center of the borough, where residents shop for goods and services, commute to their places of employment, educate their children, attend cultural and social events, participate in government activities, berth their small boats, and participate in other social, political, governmental and economic activities. Lifestyle distinctions tend to be overcome by much stronger and longer-term linkages based on these social and economic realities.

...A majority of residents are served by telephone, television (including a local cable channel), local public radio station KHNS and two weekly newspapers, the Chilkat Valley News and the Eagle Eye Journal.

...Approximately 13% of the borough is Alaska Native, exclusive of Klukwan, which is counted with the Skagway-Angoon-Yakutat Census Area. With possible, isolated exceptions among native elders, the English language is spoken throughout the borough. Borough elections do not require the printing of ballots in any language other than English.

...In addition to Haines, (other communities in the Haines Borough) arguably include Lutak, Mosquito Lake, Covenant Life Community, Excursion Inlet, and Mud Bay.

...The population has daily airline service by four airlines (LAB, Haines Airways, Wings of Alaska, and Skagway Air Service). Service is limited only by the normal weather constraints of a maritime climate. Direct access to Excursion Inlet is available by chartered air service, and by regularly scheduled seasonal flights from Juneau.

The Borough is served by the Alaska Marine Highway with regularly scheduled service. The community serves as an important year-round transportation hub with access to Interior Alaska, Canada and the contiguous United States.

...A vast majority of the borough is served by home telephones. Cellular phone service is available through-

³⁶ Petition, Exhibit H, pages 2 – 5.

Figure 5
Census Designated Places in the Haines Borough

Census Designated Place	1990 Population	2000 Population
Covenant Life CDP	47	102
Excursion Inlet CDP		10
Lutak CDP	45	39
Mosquito Lake CDP	80	221
Mud Bay CDP		137

out a wide area of the borough. Marine radio and citizens band (CB) radio are readily available and used to some extent in the borough.

DCED is aware of no evidence that conflicts with the Petitioner's characterization of the community of interests within the Haines Borough.

The City correctly notes on page 3 of its brief submitted with the Petition that there were three "census designated places" in the

Haines Borough during the 1990 Census. The U.S. Census Bureau characterizes a census designated place (CDP) as an unincorporated community. The basis for designating an area as a CDP is described as follows by the Census Bureau:

The purpose of the CDP program is to identify and delineate boundaries for closely settled, named, unincorporated communities that generally contain a mixture of residential, commercial, and retail areas similar to those found in incorporated places of similar

sizes. The intent is for a CDP to differ from an incorporated city, town, village, or borough³⁷ only in regard to legal status and recognition within its respective state.

While there were three CDPs in the Haines Borough designated during the 1990 census, two more were added for purposes of the 2000 census. The CDPs in the Haines Borough are listed in the table in Figure 5 and are shown on the map in Figure 6.

The Census Bureau's definition of a CDP is different from the legal definition of a community adopted by the Local Boundary Commission under 3 AAC 110.990(4) and 3 AAC 110.920.³⁸ Since the Commission's definition requires a population of at

³⁷ The term "borough" is used by the Census Bureau in a general sense as a place organized for local government; it is certainly not used in the sense as the term is uniquely applied to the borough form of municipal government in Alaska.

³⁸ 3 AAC 110.990(4) states that a "community" is a social unit comprised of 25 or more permanent residents as determined under 3 AAC 110.920. 3 AAC 110.920 provides for consideration of characteristics of the population (permanent residency, geographical proximity, frequency of personal contacts and population density). It also calls for consideration of whether the settlement appears to be a discrete and identifiable unit as indicated by such factors as school enrollment, number of sources of employment, voter registration, precinct boundaries, permanency of dwelling units, and the number of commercial establishments and other service centers. There is a rebuttable presumption that a settlement is not a community if (1) public access to or the right to reside at, the location of the population is restricted; (2) the population is contiguous or closely adjacent to a community or social unit and is dependent upon that community or social unit for its existence; or (3) the location of the population is provided by an employer and is occupied as a condition of employment primarily by persons who do not consider the place to be their permanent residence.

least 25 permanent residents, Excursion Inlet is not a community for purposes of the examination of the community of interests standard. Some or all of the other four CDPs, however,

may meet the Commission's definition of a community.³⁹

During the 1998 Haines consolidation proceedings, the Commission noted as

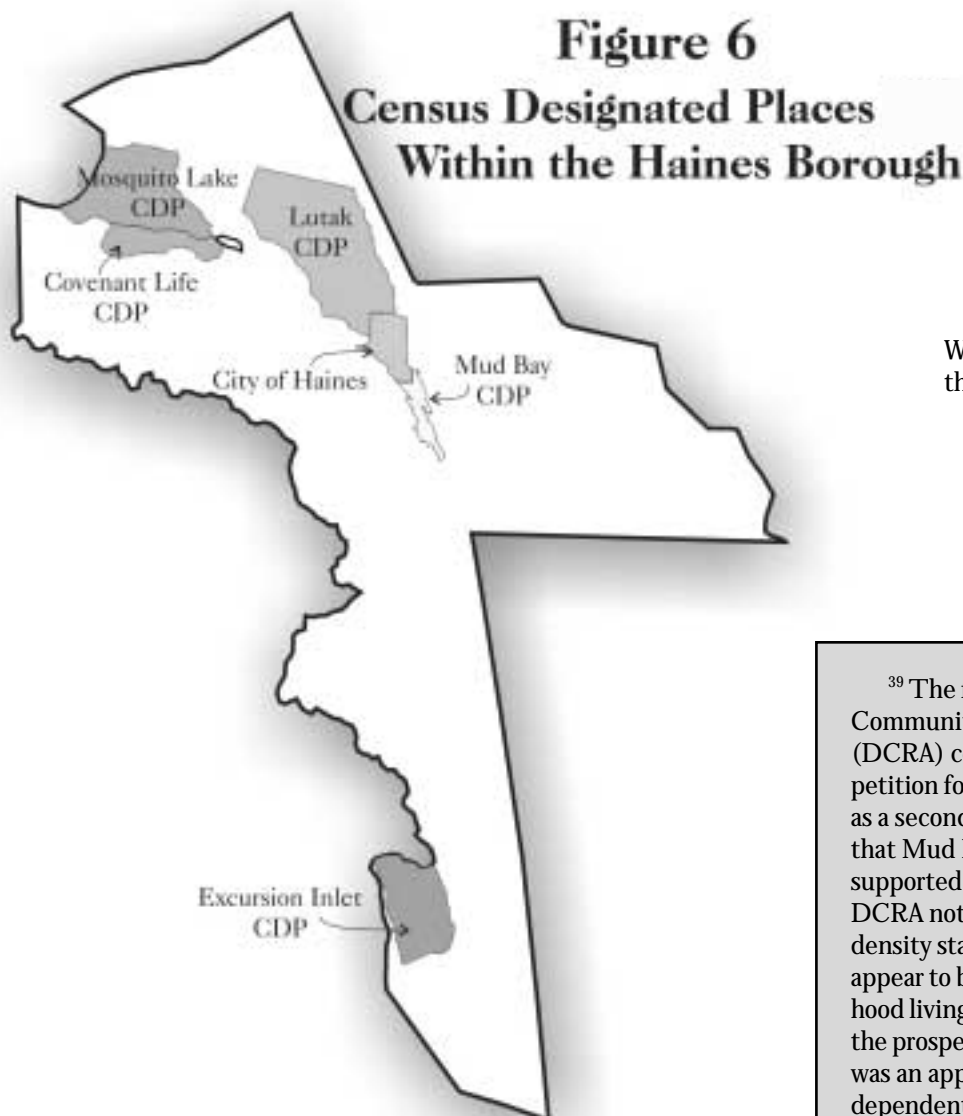
follows regarding the presumption relating to multiple communities:

The Commission concludes from the evidence that there are multiple communities within the Haines Borough. Even if there were not, the Commission finds that two aspects of the consolidation proposal offer ample specific and persuasive

reasons to overcome the presumption of 19 AAC 10.045(b).⁴⁰

The first is the simple but vital fact that the Haines Borough has existed for three decades.

While the configuration of the Haines Borough may not



³⁹ The former Alaska Department of Community and Regional Affairs (DCRA) commented on a 1997 draft petition for incorporation of Mud Bay as a second class city that the assertion that Mud Bay is a community was not supported with detailed facts. Further, DCRA noted that the population density statistics for Mud Bay do not appear to be characteristic of neighborhood living. Moreover, DCRA advised the prospective petitioners that there was an appearance that Mud Bay is dependent upon Haines for its existence. (Letter from DCRA to Ms. Cecily Stern, April 18, 1997).

⁴⁰ 19 AAC 10.045(b) has since been renumbered to 3 AAC 110.045(b).

be ideal from a statewide perspective, the Commission finds that the Borough is entitled to deference with respect to the satisfaction of this standard because of its 30-year existence.⁴¹

The second point is that the Constitution of the State of Alaska strongly favors consolidation of the nature proposed in this case. As concluded earlier by the Commission, this particular proposal is favored by Article X, Section 1 in two ways: the extension of home rule and the reduction in the number of local government units serving the residents of the Haines Borough.

••••• c. Conclusion Regarding the Community of Interests Standards.

Based on the foregoing facts, DCED concludes that all of the standards relating to community of interests

set out in Article X, § 3 of the Constitution of the State of Alaska, AS 29.05.031(a)(1), AS 29.5.031(a)(4), and 3 AAC 110.045(a)-(d) are satisfied with respect to the proposed consolidation of the City of Haines and the Haines Borough.

C. Standards Relating To Population

1. Standards Established in Law.

AS 29.05.031(a)(1) states, in part, that the population of the proposed consolidated borough must be “large and stable enough to support borough government.”

3 AAC 110.050(a) lists five factors that the Commission may consider in

making its determination on that point. The five factors consist of: (1) total census enumerations; (2) durations of residency; (3) historical population patterns; (4) seasonal population changes; and (5) age distributions. 3 AAC 110.050(a) also allows the Commission to consider other relevant factors.

3 AAC 110.050(b) states that absent a specific and persuasive showing to the contrary, the Commission will presume that the population of the proposed borough is not large and stable unless at least 1,000 permanent residents live in the proposed borough.

⁴¹ (Footnote original) Thomas Morehouse and Victor Fischer wrote in 1971 that neither the Haines Borough nor the Bristol Bay Borough “conforms well to any consistent borough model, whether of the urban or regional type, nor even to the very general legal standards for boroughs set forth in the 1961 borough act.” Borough Government in Alaska, page 109.

The Haines Borough has had two annexations since 1971, although it is unlikely that such would have changed the above characterization of the Haines Borough by Mr. Morehouse and Mr. Fischer. DCRA also notes that the Haines Borough does not currently embrace all of the territory within its model boundaries, as is discussed in some detail in DCRA’s preliminary report. Finally, there is some speculation by DCRA that if unorganized areas of Alaska were compelled to organize, residents of Gustavus might prefer to join the Haines Borough as opposed to being part of the model Glacier Bay Borough previously defined by the LBC.

2. Application of the Standards to the Haines Consolidation Proposal.

..... a. Presumptions that the standards are met.

(i) A statutory population standard similar to the current standard was in place prior to the incorporation of the Haines Borough; standards in regulations have been in place for many years since.

The statutory standard in AS 29.05.031(a)(1) is substantially the same as a borough incorporation standard first established in 1961.⁴² As was the case with regard to the community of interests standard, the 1961 standard concerning population was in place more than seven years prior to the incorporation of the Haines Borough. At the time the Commission was considering the Haines Borough incorporation petition, the population of the area was estimated to be only 792.⁴³

The existing population characteristics of the Haines Borough are identical to those of the proposed consolidated City and Borough of Haines since the boundaries of the two are identical. Again, those boundaries have existed

under boundary standards that have been in place in the Alaska Administrative Code for more than ten years.

These circumstances create a strong presumption that the population standards established in State statutes and the Alaska Administrative Code are satisfied.

(ii) The governing bodies of the Haines Borough and City of Haines declared that the population standards were met in 1998.

The Council of the City of Haines and the Haines Borough Assembly both adopted resolutions in March 1998 stating that, "... the population of the prospective consolidated home rule Haines Borough is large and stable enough to support a borough government."⁴⁴

The pronouncement by the Haines Borough Assembly and the Haines City Council three years ago adds further to DCED's contention that there is a strong presumption that the referenced population standards in the statutes and regulations are satisfied.

(iii) The Local Boundary Commission concluded that the population standards were met in 1998.

The Local Boundary Commission stated as follows regarding the satisfaction of the population standards with respect to the 1998 Haines consolidation proposal:⁴⁵

...four [of Alaska's sixteen organized boroughs] had smaller populations [than the Haines Borough as of July 1, 1997]. The Commission notes that the population of the Haines Borough exceeds the 1,000 resident

⁴² AS 07.10.030(1), enacted by Chapter 146, SLA 1961, provided in relevant part that, "The population shall be . . . large enough and stable enough to warrant and support the operation of organized borough government."

⁴³ See: Local Affairs Agency, *Incorporation of the Haines Borough*, January 1968. The population was apparently grossly underestimated since the 1970 Census indicated that the Haines Borough had a population of 1,351.

⁴⁴ Haines Borough Resolution # 442 and City of Haines Resolution No. 97/98 – 30.

⁴⁵ 1998 Haines Consolidation Decision, pages 9 - 10.

threshold set out in 19 AAC 10.050(b) by nearly 2.5 times.⁴⁶ Additionally, it is relevant to again stress that the residents of the Haines Borough have successfully operated a borough government for the past 30 years. When it was formed three decades ago, the population of the Haines Borough was approximately half of what it is today...

Since 1970, two years after the Haines Borough was incorporated, the population of the Borough has increased by 79.2 percent, an average of 2.73 percent annually...

Significant seasonal population changes are not a factor or issue relevant to the area, although the resident population increases slightly during the summer due to seasonal work in the construction, fishing and service sectors of the local economy.

1990 age distribution patterns within the City of Haines and the remainder of the Haines Borough are generally typical of those found throughout Alaska.

... the Commission concludes that the standards set out in AS 29.05.031(a)(1) and 19 AAC 10.050 are fully satisfied with respect to the pending petition. Accordingly, the Commission concludes that the population of the Haines Borough is sufficiently large and stable to support the proposed consolidated borough government.

(iv) The Haines Borough does not assert that the pending Petition fails to satisfy the population standards.

Nothing in the Response Brief of the Haines

Figure 7
Population of Organized Boroughs
2000

Municipality of Anchorage	260,283
Fairbanks North Star Borough	82,840
Matanuska-Susitna Borough	59,322
Kenai Peninsula Borough	49,691
City and Borough of Juneau	30,711
Ketchikan Gateway Borough	14,070
Kodiak Island Borough	13,913
City and Borough of Sitka	8,835
North Slope Borough	7,385
Northwest Arctic Borough	7,208
Aleutians East Borough	2,697
Haines Borough	2,392
Denali Borough	1,893
Lake and Peninsula Borough	1,823
Bristol Bay Borough	1,258
City and Borough of Yakutat	808

Borough claims that the Petition pending before the Local Boundary Commission fails to meet the population standards set out in AS 29.05.031(a)(1) or 3 AAC 110.050(a)-(b).

• • • • •
b. Evidence in the Current Proceeding Demonstrates Satisfaction of the Standards.

The written record in this proceeding provides further evidence that the

population of Haines is sufficiently large and stable to support the proposed consolidated borough. Specifically, the Petition states as follows regarding this standard:⁴⁷

The Haines Borough is comprised of family-oriented, residential communities...

In the 1970 census, 1,351 residents were recorded in the Haines Borough. Ten years later, 1,680 were living in the Haines Borough.

⁴⁶ 19 AAC 10.050(b) has since been renumbered to 3 AAC 110.050(b).

⁴⁷ Petition, Exhibit H, pages 5 – 7.

At the time of the 1990 federal census 2,117 were recorded. DCED estimates that the current population of the Haines Borough is 2,516. . .

Decennial census data from the incorporation of the Haines Borough to the present demonstrates a pattern of steady population growth. The Haines Borough has grown 79% since 1970. . .

Significant seasonal population changes are not a factor or issue relevant to the area, although the resident population increases slightly during the summer due to seasonal work in the construction, fishing and service sectors of the local economy.

The Alaska Department of Labor recorded the median age of Haines Borough residents at 37.2 years in 1996. The statewide average was 30.9. . .

. . . indices demonstrate that the age distribution of the Haines Borough population, at least in terms of its youth, is consistent with that of other boroughs in Alaska.

The City correctly notes that DCED estimated the 2000 population of the Haines Borough to be 2,516. The 2000 Census, however, indicated that the population of the Haines Borough was 4.9% lower at 2,392.

The 2000 Census population of the Haines Borough is nearly 2.4 times the presumptive minimum level set out in 3 AAC 110.050(b).

According to the 2000 census, the Haines Borough had a population greater than that of four of Alaska's sixteen organized boroughs. The 2000 Census populations of the sixteen organized boroughs are shown in the table in Figure 7 on the previous page.

The population of the Haines Borough has grown steadily over the past three decades as shown in Figure 8 on the following page.

From 1970 to 1980, the population of the Haines

Borough increased 24.4 percent. The following decade, the population increased by 26.0 percent. Population growth in the past decade has slowed to 13.0 percent.

The Alaska Department of Labor projected in 1998 that the population of the Haines Bor-



Road construction in a subdivision within the City of Haines.

ough would continue to grow over the following two decades.⁴⁸ A low-range scenario predicted that the population would grow at an annual average rate of 0.19%, resulting in 2,667 residents by 2018. The low-range projected growth rate was considerably less than the comparable low-range growth figure of 0.70% projected for the state as a whole. The mid-range scenario for population growth in the Haines Borough projected an annual average growth rate of 1.21% resulting in 3,146 residents

by 2018. The growth rate for that scenario was slightly higher than the 1.13% mid-range growth rate projected for the entire state. A high-range scenario estimated an annual population growth rate for the Haines Borough of 2.24%, resulting in 3,934 residents by 2018. The percentage of growth in the high-range scenario was notably higher than the 1.53% projected high-range growth rate for all of Alaska.

The historic and projected population data support a finding that the

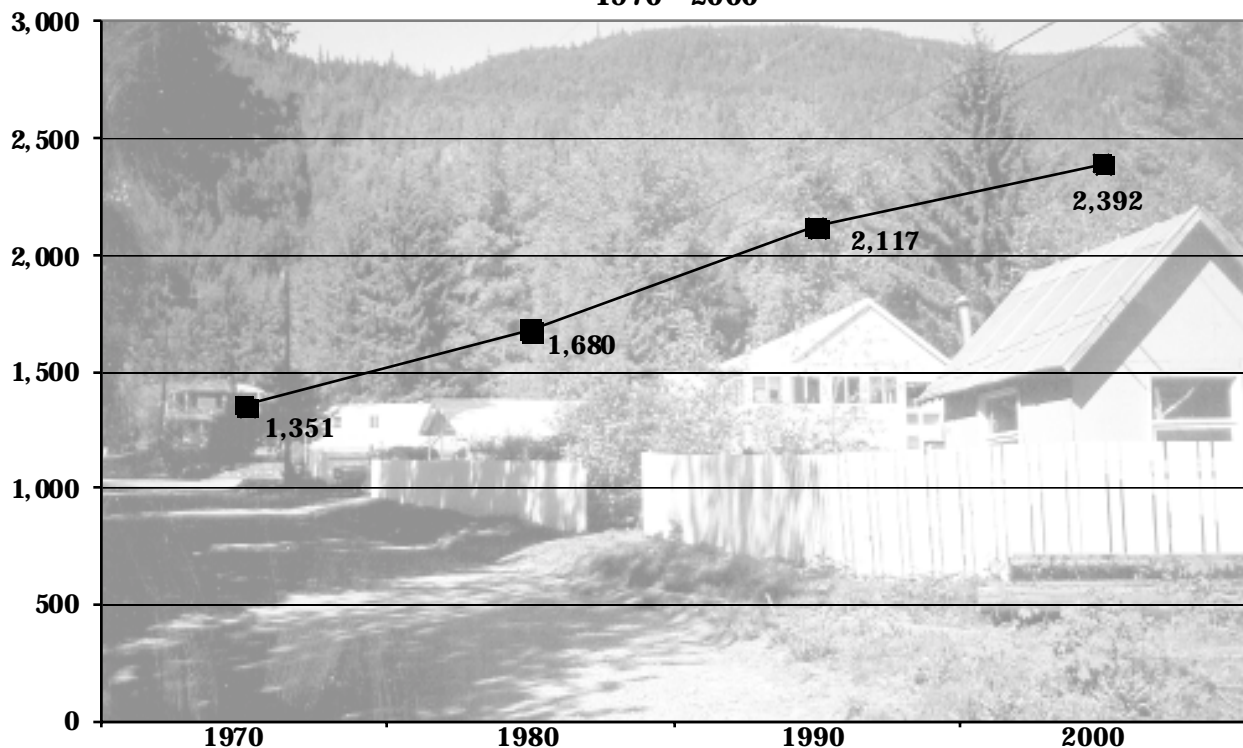
population of the Haines Borough is clearly stable enough to meet the standard.

••••• c. Conclusion Regarding the Population Standards.

Given the foregoing findings, DCED concludes that the standards set out in the relevant portion of AS 29.05.031(a) and 3 AAC 110.050(a)-(b) are satisfied with respect to the pending petition for consolidation of the City of Haines and the Haines Borough.

⁴⁸ < <http://www.labor.state.ak.us/research/pop/pop-proj.pdf> >

Figure 8
Population of Haines Borough
1970 - 2000



D. Standards Relating to Boundaries

1. Standards Established in Law

AS 29.05.031(a) (2) provides that the boundaries of the proposed consolidated borough must “conform generally to natural geography and include all areas necessary for full development of municipal services.”

3 AAC 110.060(a) is similar to, but more specific than, AS 29.05.031(a) (2). It directs the Commission to examine the region’s capability to provide “essential borough services” on an “efficient, cost-effective level.” 3 AAC 110.060(a) lists six factors that the Commission may consider in making its determination on that point. Specifically, 3 AAC 110.060(a) states that the Commission will, in its discretion, consider relevant factors, including (1) land use and ownership patterns; (2) ethnicity and cultures; (3) population density patterns; (4) existing and reasonably anticipated transportation patterns and facilities; (5) natural geographical features and environmental factors; and (6) extraterritorial powers of boroughs. 3 AAC 110.060(a)

also allows the Commission to consider other relevant factors.

The term “essential borough services” is defined at 3 AAC 110.990(7) as follows: “essential borough services” means those mandatory and discretionary activities and facilities that are determined by the Commission to be reasonably necessary to the territory and that cannot be provided more efficiently and more effectively either through some other agency or political subdivision of the state, or by the creation or modification of some other political subdivision of the state; “essential borough services” may include (A) assessing and collecting taxes; (B) providing primary and secondary education; (C) planning, platting, and land use regulation; and (D) other services that the Commission considers reasonably necessary to meet the borough governmental needs of the territory;

3 AAC 110.060(b) states that absent a specific and persuasive showing to the contrary, the Commission will not approve the proposed consolidated borough with boundaries extending beyond the model borough boundaries adopted by the Commission.

3 AAC 110.060(c) states that the proposed borough boundaries must conform to existing regional educational attendance area boundaries unless the

Commission determines, after consultation with the Commissioner of the Department of Education and Early Development, that a territory of different size is better suited to the public interest in a full balance of the standards.

3 AAC 110.060(d) states that if the petition for consolidation describes boundaries overlapping the boundaries of an existing organized borough, the petition must also address and comply with all standards and procedures for detachment of the overlapping region from the existing organized borough.

2. Application of the Standards to the Haines Consolidation Proposal.

••••• a. Presumptions that the standards are met.

(i) Statutory standards regarding boundaries were in place prior to the incorporation of the Haines Borough; additionally, the boundary standards in the Alaska Administrative Code have been in place for the past decade.

The statutory standards in AS 29.05.031(a) (2) are similar in most respects to the borough incorporation boundary standards first

established in 1961.⁴⁹ Here again, the 1961 standards were in place more than seven years prior to the incorporation of the Haines Borough. Further, the standards set out in 3 AAC 110.060 have been in place for a decade.

Since the existing boundaries of the Haines Borough are the same as the boundaries of the proposed City and Borough of Haines, the boundary characteristics of the former are identical to those of the latter.

Here again, these circumstances create a strong presumption that the boundary standards established in State statutes and the Alaska Administrative Code are satisfied.

(ii) The Haines Borough and City of Haines affirmed that the standards were met in 1998.

The Haines Borough Assembly and the Haines City Council each formally stated as follows three

years ago regarding the prior consolidation proposal:

the territory within the prospective consolidated home rule Haines Borough conforms generally to natural geography and includes all land and water necessary to provide the full development of essential boroughs services on an efficient, cost-effective level.⁵⁰

The formal declaration by the Haines Borough and the Haines City Council in 1998 adds to the strength of the presumption that the referenced population standards in the statutes and regulations are satisfied.

(iii) The Local Boundary Commission concluded that the standards were met in 1998.

The Commission concluded as follows regarding the boundary standards in the 1998 proceedings.⁵¹

The proposed boundaries for the consolidated Haines Borough are the same as the current third class Haines Borough boundaries. The Haines Borough originally encompassed approximately 2,200 square miles. Klukwan, located approximately 21 miles north of Haines along the Haines Highway, and the military petroleum distribution facility at Lutak Inlet were excluded from the Borough.

In 1975, the Haines Borough annexed approximately 420 square miles to the south. In 1978, the Haines Borough annexed the former military petroleum distribution facility at Lutak Inlet.

The current boundaries of the Haines Borough have been in place for over twenty years. It is particularly noteworthy with respect to the standard at issue that when the Commission approved the annexation of 420 square miles to the Haines Borough, it did so because, "inclusion of the territory within the Haines Borough would

⁴⁹ One major difference between the current law and the 1961 law was that the former prohibited the inclusion of "all areas such as military reservations, glaciers, icecaps, and uninhabited and unused lands unless such areas are necessary or desirable for integrated local government." AS 07.10.030(2), enacted by Chapter 146, SLA 1961, provided that, "The boundaries of the proposed organized borough shall conform generally to the natural geography of the area proposed for incorporation, shall include all areas necessary and proper for full development of integrated local government services, but shall exclude all areas such as military reservations, glaciers, icecaps, and uninhabited and unused lands unless such areas are necessary or desirable for integrated local government."

⁵⁰ Haines Borough Resolution # 442 and City of Haines Resolution No. 97/98 – 30.

⁵¹ 1998 Haines Consolidation Decision, pages 12 - 13.

more fully allow that municipality to meet standards for formation of a borough in that the new boundaries to be established would more closely approximate 'natural geography,' altering the geographical southern boundary of the Haines Borough, an arbitrary line extending east and west bisecting the Chilkat Peninsula, a natural geographic part of the Haines Borough." [Decisional Statement] in the Matter of the Petition for Annexation of Territory to the Haines Borough, Local Boundary Commission, page 3 (May 15, 1974).

The existing boundaries of the Haines Borough do not conform to the model boundaries of the Haines Borough as established by the Local Boundary Commission on May 8, 1992. The latter includes Klukwan and the City of Skagway. However, the Haines Borough is not the only organized borough in Alaska whose corporate boundaries do not conform to its model boundaries as defined by the Commission. Others consist of the Ketchikan Gateway Borough, the City and Borough of Juneau, the Denali Borough, and the Fairbanks North Star Borough.

Additionally, there have been instances in which the Commission has approved petitions for borough incorporation and annexation

with boundaries not fully extending to the model boundaries for the respective borough. In 1990, the Commission approved incorporation of the Denali Borough with boundaries not extending to full limits of its model boundaries. Additionally, the Commission approved annexation to the City and Borough of Juneau in 1990 without compelling the inclusion of all territory within its model boundaries.

The Commission finds that consolidation is a highly favorable development with respect to local government in Haines. The positive direction resulting from consolidation is more than sufficient to overcome shortcomings with respect to the model boundaries of the Haines Borough. In other words, the Commission recognizes that ideal municipal boundaries and governmental structure are goals which may not be achieved in the near future, but toward which progress may be attained incrementally over time.

Any proposal to modify the boundaries of the Haines Borough in conjunction with the consolidation effort would be procedurally cumbersome. The issue of consolidation involves an areawide election among the residents of the Haines Borough whereas annexation would require either legislative review or a sepa-

rate election just in the territory proposed for annexation. It is also apparent that any proposal to expand the boundaries of the Haines Borough would likely be controversial and involve existing communities whose residents have not yet requested extension of borough boundaries into their communities.

The presumption in the Commission's regulations at 19 AAC 10.060(c)⁵² that proposed borough boundaries must conform to existing regional educational attendance area boundaries does not apply in this instance since the area under consideration is wholly within an existing organized borough.

The Commission finds that the petition for consolidation does not propose boundaries that overlap the boundaries of an existing organized borough.

Based on the foregoing findings, the Commission concludes that the existing boundaries of the Haines Borough conform generally to natural geography and include all areas necessary for full development of municipal services on an efficient, cost-effective level. The Commission concludes that the standards set out in AS 29.05.031(a)(2) and 19 AAC 10.060 are fully satisfied with respect to the pending petition.

⁵² 19 AAC 10.060(c) has since been renumbered to 3 AAC 110.060(c).

As noted in subsection b, nothing concerning municipal boundaries has changed in the past three years to suggest that the Commission's 1998 conclusion is no longer accurate.

•••••
**b. Evidence in the
 Current Proceeding
 Demonstrates Satisfaction
 of the Standards.**

The Petition offers statements in support of the boundary standards that are similar to the previously noted conclusions reached by the Local Boundary Commission three years ago.

Additionally, the Petitioner provides the following explanation for the lack of conformance with the model borough boundaries (Petition, Exhibit H, page 16):

The proposed borough boundaries do not extend beyond the model boundaries established by the Local Boundary Commission. The petitioners recognize that the existing boundaries of the Haines Borough do not conform to the model borough boundaries for the Haines Borough established by the Local Boundary Commission on May 8, 1992. To attempt to modify the boundaries concurrent with

consolidation would be extremely cumbersome from a procedural standpoint. While consolidation involves an election within the proposed new municipality, annexation would require either legislative review or an election just in the territory proposed for annexation.

Moreover, any proposal to expand the boundaries of the Borough would likely be controversial and would distract attention and resources from the more significant issue of consolidation. For example, the community of Skagway is included in the model borough boundaries of the Haines Borough. The petitioners are aware that residents and municipal officials in Skagway are currently contemplating the incorporation of a borough encompassing just Skagway. The City of Skagway commented on the model borough boundaries in 1992 by stating its objection to being included in the Haines Borough.

The Respondent Haines Borough's Representative does not directly assert that the Petition fails to satisfy the boundary standards, however, he presents the

following question in the Borough's Responsive Brief (pages 5-6):

LBC Staff has stated that if the Haines Borough wishes to ever expand Borough boundaries to the suggested model boundaries, they would strongly suggest that the Village of Klukwan be included. The Borough is not suggesting that Klukwan be annexed, however, if the petitioner's intent is to minimize governmental units why isn't Klukwan included in this consolidation effort?

A careful reading of the comments above is warranted to avoid misunderstanding.⁵³ Neither DCED nor the Petitioner advocates annexation of Klukwan to the Haines Borough at this time. DCED believes that the Petitioner offers a legitimate public policy basis for the exclusion of Klukwan from the pending consolidation proposal.

Contrary to the implication from the Respondent's Representative, even if Klukwan were included in the consolidation proposal

⁵³ The Respondent's Representative did not cite the basis for the assertion that "LBC Staff has stated that if the Haines Borough wishes to ever expand Borough boundaries to the suggested model boundaries, they would strongly suggest that the Village of Klukwan be included." By definition, however, since Klukwan is within the model boundaries of the Haines Borough, it would have to be included if the Borough is ever to conform to those model boundaries.

the number of governmental units would not be reduced. As correctly noted by the Petitioner, Klukwan is under the jurisdiction of the Chatham Regional Educational Attendance Area. While annexation of Klukwan to the City and Borough of Haines would diminish the area within the jurisdiction of the Chatham Regional Educational Attendance Area, it would certainly not eliminate it.

The Commission's application of the model borough boundary standard (3 AAC 110.060[b]) and the regional educational attendance area standard (3 AAC 110.060[c]) to the 1998 Haines consolidation proposal was described in subsection D-2-a-(iii) of this chapter. It is noteworthy that the Commission utilized the same approach with respect to the recently approved petitions for consolidation of local governments in both the Ketchikan area and the Fairbanks area.

3 AAC 110.060(d) provides that if a borough proposal describes boundaries overlapping the boundaries of an existing borough, the Commission must

address the overlapping area in the context of the detachment standards. There is no overlapping area in this instance.

••••• **c. Conclusion Regarding the Boundary Standards.**

Based on the foregoing, DCED concludes that the boundary standards set out in AS 29.05.031(a)(2) and 3 AAC 110.060(a)-(d) are satisfied with respect to the pending proposal for consolidation of the City of Haines and the Haines Borough.

E. Standards Relating to Resources

1. Standards Established in Law

AS 29.05.031(a)(3) states that the economy of the proposed consolidated borough must include "the human and financial resources capable of providing municipal services." That statutory standard provides that consideration must be given to land use, property values, total economic base, total personal income, resource and commercial development, anticipated

functions, expenses, and income of the proposed consolidated borough.

3 AAC 110.055 is more specific than AS 29.05.031(a)(3). It focuses on the human and financial resources necessary to provide "essential borough services" (defined in the discussion of the prior standard) on an "efficient, cost-effective level." It allows consideration of the same eight standards that are listed under AS 29.05.031(a)(3), but adds three discretionary factors. Those relate to (1) the feasibility and plausibility of the anticipated operating budget through the third full fiscal year of operation; (2) the need for and availability of employable skilled and unskilled people; and (3) the reasonably predictable level of commitment and interest of the population in sustaining a municipal corporation. 3 AAC 110.055 also allows the Commission to consider other relevant factors.

2. Application of the Standards to the Haines Consolidation Proposal.

..... a. Presumptions that the standards are met.

(i) A statutory standard similar to the current resources standard was in place prior to the incorporation of the Haines Borough; additionally, the resources standards in the Alaska Administrative Code have been in place for the past decade.

The statutory standard in AS 29.05.031(a)(3) is similar in most respects to the resources standard for borough incorporation first established in 1961.⁵⁴ Here again, the 1961 standard was in place more than seven years prior to the incorporation of the Haines Borough. Moreover, the standards set out in 3 AAC 110.055 have been in place for a decade.

Since the existing boundaries of the Haines Borough are the same as the boundaries of the

proposed City and Borough of Haines, the economic characteristics of the former are identical to the latter.

The Haines Borough has successfully operated a borough government for the past thirty-three years. That fact creates a strong presumption that the resources standards established in State statutes and the Alaska Administrative Code are satisfied.

(ii) The Haines Borough Assembly and Haines City Council asserted the standards were met in 1998.

The governing bodies of the City of Haines and the Haines Borough each formally stated in 1998 that “the economy of the prospective home rule Haines Borough includes the human and financial resources necessary to provide essen-

tial borough services on an efficient and cost-effective level.”⁵⁵

The statement by the Assembly of the Haines Borough and the Council of the City of Haines three years ago reinforces the validity of the presumption that the referenced population standards in the statutes and regulations are satisfied.

(iii) The Local Boundary Commission concluded that the resources standards were met in 1998.

The Commission concluded as follows regarding the application of the resources standards to the 1998 Haines consolidation proposal.⁵⁶

Based on the foregoing findings, the Commission concludes that the standards set out in AS 29.05.031(a)(3) and 19

⁵⁴ AS 07.10.030(3), enacted by Chapter 146, SLA 1961, provided that, “The economy of the proposed organized borough shall encompass a trading area with the human and financial resources capable of providing an adequate level of governmental services. In determining the sufficiency and stability of an area’s economy, land use, property valuations, total economic base, total personal income, present and potential resource or commercial development, anticipated functions, expenses, and income of the proposed organized borough shall be considered.”

⁵⁵ Haines Borough Resolution # 442 and City of Haines Resolution No. 97/98 – 30.

⁵⁶ 1998 Haines Consolidation Decision, page 12.

AAC 10.055 are satisfied with respect to the pending petition.⁵⁷ The Commission concludes that the Haines Borough has sufficient human and financial resources to operate a borough government.

Evidence outlined in subsection b regarding the contemporary economic characteristics of the greater Haines area indicate that the Commission's 1998 conclusions regarding the standard at issue remain valid today.

.....
b. Evidence in the Current Proceeding Demonstrates Satisfaction of the Standards.

The statutory standards regarding resources expressly require consideration of specific economic characteristics. This section of the report examines such characteristics as well as other relevant factors.

(i) Anticipated functions of the proposed consolidated borough.

The Petition lists the following thirteen areawide functions of the proposed consolidated borough (Peti-

tion, page 3-4; also Exhibit H of the Petition, page 8):

1. education;
2. tax assessment and collection;
3. planning, platting, and land use regulation;
4. control of hazardous substances;
5. emergency medical services;
6. emergency dispatch services;
7. ports and harbors;
8. funding capital improvement projects;
9. public parks and recreational facilities;

10. public libraries;
11. museums;
12. cemeteries;
13. economic development.

As noted previously, it is the Petitioner's intention that the consolidated borough will provide solid waste management on an areawide basis. Consequently, that function should be added to the list of areawide powers.

Further, the Petition indicates on page 10 of Exhibit H that economic development and the promotion of tourism will be carried out on a service area basis within the Townsite Service Area unless voters approve the assumption of such powers on an areawide basis. Thus, economic development should be deleted from the list of areawide powers.



Ambulance used to provide emergency medical services.

⁵⁷ 19 AAC 10.055 has since been renumbered to 3 AAC 110.055.



City police and fire facility in Haines.

The revised list of proposed areawide powers follows:

1. education;
2. tax assessment and collection;
3. planning, platting, and land use regulation;
4. control of hazardous substances;
5. emergency medical services;
6. emergency dispatch services;
7. ports and harbors;
8. funding capital improvement projects;
9. public parks and recreational facilities;

10. public libraries;
11. museums;
12. cemeteries;
13. solid waste management.

The Petition (Exhibit E-3) indicates that the proposed consolidated borough will exercise the following five powers on a service area basis within the Townsite Service Area.

1. police protection;
2. fire protection, prevention, and safety;
3. animal control;
4. water and sewer utilities;
5. street and road maintenance

Page 9 of Exhibit H of the Petition also lists public works as a service area function to be carried out in the Townsite Service Area. Moreover, the Petition indicates on page 10 of Exhibit H that unless voters approve the extension of the current 1.5% City sales tax for capital improvement projects and the City's 1.0% sales tax for economic development/tourism promotion those functions will also be carried out on a service area basis in the Townsite Service Area.⁵⁸ Thus, those powers should be added to the list of service area powers to be exercised within the Townsite Service Area. The revised list of those powers follows:

1. police protection;
2. fire protection, prevention, and safety;
3. animal control;
4. water and sewer utilities;
5. street and road maintenance;
6. public works;
7. funding for capital improvement projects;
8. economic development and tourism promotion.

⁵⁸ The proposed authority to fund capital improvements on a service area basis would be distinct and separate from the proposed areawide authority to undertake areawide capital improvements. Such arrangements are permissible. That is, the law expressly allows a borough to provide a higher level of an areawide service within a service area.

Figure 9			
Estimated Areawide Expenditures Listed in the Petition			
Areawide Expense	Year One	Year Two	Year Three
Education (including preschool)	\$4,294,000	\$4,300,000	\$4,310,000
Tax assessment and collection	153,670	158,280	164,611
Planning, platting, and land use regulation	25,000	25,000	20,000
Control of hazardous substances	6,000	6,000	6,000
Emergency medical services	181,934	195,632	199,544
Emergency dispatch and jail	391,432	399,261	407,246
Ports and harbors	222,900	227,400	232,000
Public parks, recreation facilities, buildings	65,000	67,500	71,000
Public library	193,000	202,650	210,756
Museum	140,000	146,300	152,900
Cemeteries	6,000	6,000	6,000
Economic development & tourism promotion	298,207	304,171	310,254
Administration	539,725	518,136	528,499
Totals	\$6,516,868	\$6,556,330	\$6,618,810

(ii) Anticipated expenses of the proposed consolidated borough.

The Petition offers the estimate of *areawide* expenditures by the proposed home rule consolidated borough for the first three years of operation. This estimate is shown in Figure 9.

As noted previously, Page 10 of the Brief in support of the consolidation proposal (Petition, Exhibit H) indicates that economic development and tourism promotion will be exercised on

a service area basis within the Townsite Service Area, unless voters authorize the extension of the service areawide.

Moreover, the budget in the Petition does not include any projected expenditure for solid waste management. The Haines Borough has budgeted \$26,900 for the coming year for solid waste management functions.⁵⁹

DCED conferred with the Petitioner on these and other issues, including updated projected expenditures by the Haines Borough and the City of Haines for the upcoming fiscal year. Based on those discussions, adjustments to the areawide expenditures projected in the Petition are offered to the Commission for consideration. These adjustments are shown on Figure 10 (next page).

⁵⁹ City officials indicate that the Borough's solid waste management plan calls for a tax to generate \$170,000 annually for solid waste management services. However, the Assembly has reportedly shown no support for such a tax. Thus, expenses for solid waste management are estimated to be \$27,000 annually.

Figure 10
Adjustments to Estimated Areawide Expenditures
Listed in the Petition

Adjustment	Year One	Year Two	Year Three
Reduce education expenses (including preschool)	(\$34,123)	(\$34,159)	(\$33,921)
Increase tax assessment and collection expenses	43,498	38,888	32,557
Increase planning, platting, and land use regulation expenses	4,000	4,000	9,000
Increase control of hazardous substances expenses	4,000	4,000	4,000
Reduce emergency medical services expenses	(18,049)	(19,407)	(19,795)
Reduce emergency dispatch and jail expenses	(10,906)	(11,000)	(11,005)
Increase public library expenses	26,000	16,350	8,244
Increase museum	15,000	8,700	2,100
Reduce cemeteries expenses	(3,900)	(3,900)	(3,900)
Eliminate areawide economic development & tourism promotion expenses	(298,207)	(304,171)	(310,254)
Add solid waste management expenses	27,000	27,000	27,000
Total adjustments	(\$245,687)	(\$273,699)	(\$295,974)

Incorporating the above noted adjustments into the budget documents included in the Petition results in the modified projections of areawide expenditures shown in Figure 11.

The Petition presented the estimated Townsite Service Area expenditures for the proposed home rule consolidated borough during the first three years of operation as shown in Figure 12.

As previously indicated, economic development and the promotion of tourism will, at least initially, be exercised on a service area basis within the Townsite Service Area. So too will funding for capital improvements.⁶⁰

DCED conferred with the Petitioner on these and other issues, including updated projected expenditures by the Haines Borough and the City of Haines for the upcoming fiscal year. Based on those discussions, the adjustments to the Townsite Service Area

⁶⁰ DCED understands the terms "economic development", "promotion of tourism", and "financing capital improvements" to include debt service such as the payment of principal and interest on the Port Chilkoot Dock General Obligation Bonds.

Figure 11
Modified Projections of Areawide Expenditures

Areawide Expense (Revised)	Year One	Year Two	Year Three
Education (incl. Preschool)	\$4,259,877	\$4,265,841	\$4,276,079
Tax assessment and collection	197,168	197,168	197,168
Planning, platting, and land use regulation	29,000	29,000	29,000
Control of hazardous substances	10,000	10,000	10,000
Emergency medical services	163,885	176,225	179,749
Emergency dispatch (includes jail)	380,526	388,261	396,241
Ports and harbors facilities	222,900	227,400	232,000
Funding capital improvement projects	0	0	0
Public parks, recreation facilities, buildings	65,000	67,500	71,000
Public libraries	219,000	219,000	219,000
Museums	155,000	155,000	155,000
Cemeteries	2,100	2,100	2,100
Solid Waste Management	27,000	27,000	27,000
Administration	539,725	518,136	528,499
Totals	\$6,271,181	\$6,282,631	\$6,322,836

Figure 12
Estimated Townsite Service Area Expenditures Listed in the Petition

Townsite Service Area Expense	Year One	Year Two	Year Three
Road maintenance	\$309,436	\$315,624	\$325,093
Police protection	326,134	352,657	339,310
Fire protection	185,828	189,544	193,335
Animal control	34,523	34,523	34,523
Public works	146,694	148,894	149,341
Water and sewer utilities	600,142	606,143	615,235
TOTALS	\$1,602,757	\$1,647,385	\$1,656,837

expenditures projected in the Petition are offered to the Commission for consideration. These adjustments are presented in Figure 13 on the following page.

Incorporating the above noted adjustments into the budget documents set out in the Petition results in the modified projections of Townsite Service Area expenditures during the first three years. These projections are listed in Figure 14 on the following page.

Figure 13
Adjustments to Estimated Townsite Service Area Expenditures
Listed in the Petition

Adjustment	Year One	Year Two	Year Three
Reduce police protection	(\$ 30,000)	(\$ 30,000)	(\$ 10,232)
Reduce fire protection	(5,000)	(5,000)	(5,000)
Reduce animal control	(5,005)	(5,005)	(5,005)
Reduce water and sewer utilities	(4,035)	(4,075)	(7,146)
Add economic development & tourism	296,906	304,171	310,254
Add capital improvement projects	894,000	906,850	921,500
Totals	\$1,146,866	\$1,166,941	\$1,204,371

Figure 14
Modified Projections of Townsite Service Area Expenditures

Service Area Expense (Revised)	Year One	Year Two	Year Three
Road maintenance	\$309,436	\$315,624	\$325,093
Police protection	296,134	322,657	329,078
Fire protection	180,828	184,544	188,335
Animal control	29,518	29,518	29,518
Public works	146,694	148,894	149,341
Water and sewer utilities	596,107	602,068	608,089
Economic Development & Tourism	296,906	304,171	310,254
Capital Improvement Projects	894,000	906,850	921,500
Totals	\$2,749,623	\$2,814,326	\$2,861,208

(iii) Anticipated revenues of the proposed consolidated borough.

The Petition (Exhibit H, page 10) projects areawide income during the first three years of operation⁶¹ as shown in Figure 15 on the following page.

DCED conferred with the Petitioner about a number of the specific

areawide revenue projections. Based on updated estimates of local, State, and federal funding available for local government in the greater Haines area, the adjustments to projected areawide revenues listed in Figure 16 are offered to the Commission for consideration.

⁶¹ The budget in the Petition grouped together the estimated revenues from the Alaska Department of Public Safety jail and dispatch contract and areawide State Revenue Sharing funding. City officials advised DCED that the jail contract provides for payments of approximately \$80,000 annually. Thus, the balance is attributed to estimated State Revenue Sharing payments (i.e., \$21,900 in the first year and \$23,000 in the second and third years).

Figure 15
Estimated Areawide Revenues in the Petition

Areawide Revenue Source	Year One	Year Two	Year Three
Property taxes	\$1,058,005	\$1,098,209	\$1,142,138
Sales taxes (1.5%)	450,000	460,000	470,000
State and federal education funding	2,598,400	2,611,400	2,615,000
State shared business fisheries taxes	198,000	198,000	198,000
National forest receipts	100,000	534,000	520,600
Federal payments in lieu of taxes	105,000	100,000	100,000
State revenue sharing	21,900	23,000	23,000
State jail contract	80,000	80,000	80,000
Safe communities program	22,970	22,970	22,970
Other (interest, rents, etc)	67,900	69,000	70,000
Ports and harbors fees	315,000	325,000	345,000
Public library fees	3,300	3,500	3,700
Museum fees	48,000	48,000	48,000
Cemetery fees	3,500	3,500	3,500
Lodging Tax	56,000	56,000	56,000
Tour & Charter Tax	50,000	50,000	50,000
Totals	\$5,177,975	\$5,682,579	\$5,747,908

Incorporating the above noted adjustments into the budget documents set out in the Petition results in the modified projections of areawide revenues during the first three years as shown in Figure 17.

The Petition (Exhibit H, page 10) estimates the service area income from the Haines Townsite Service Area during the first three years of operation as listed in Figure 18.

DCED conferred with the Petitioner about a number of the specific revenue projections for the Townsite Service Area. Based on updated estimates of local, State, and federal funding available for local government in the prospective Townsite Service Area, adjustments to projected service area revenues for the core of the community are offered to the Commission for consideration. These adjustments are found in Figure 19.

Incorporating the above noted adjustments into the budget documents set out in the Petition results in modified projections of areawide revenues during the first three years as shown in Figure 20.

(iv) Feasibility and plausibility of the proposed operating budget through the third full fiscal year.

With the adjustments made to the budgets in the two preceding subsections, the revised estimates of the areawide and Townsite

Figure 16
Adjustments to Estimated Areawide Revenues
Listed in the Petition

Adjustment	Year One	Year Two	Year Three
Increase in property tax revenues based on current assessments	\$101,172	\$105,017	\$106,810
Reduction in State and federal education funding	(27,228)	(27,372)	(27,354)
Increase in State shared business fisheries taxes	10,500	10,500	10,500
Adjustment in National Forest Receipts (increase in year 1, reductions in years 2 and 3)	392,000	(42,000)	(28,600)
Increase in federal payments in lieu of taxes	69,355	74,355	74,355
Increase in State jail & dispatch contract	9,389	9,389	9,389
Increase in State Revenue Sharing	2,600	1,500	1,500
Reduction in Safe Communities program	(6,520)	(6,520)	(6,520)
Increase in other revenues (interest, rents, etc)	222,600	226,206	229,406
Decrease in ports and harbors fees	(142,971)	(125,000)	(112,480)
Decrease in cemetery revenues	(1,400)	(1,400)	(1,400)
Increase in lodging tax	42,000	42,000	42,000
Tour & Charter Tax	24,000	24,000	24,000
Add transfer of Permanent Fund earnings (after "inflation proofing")	195,000	195,000	195,000
Add transfer of Land Fund	245,636	245,636	245,636
Total adjustments	\$1,136,133	\$731,311	\$762,242

Service Area expenditures and revenues appear to be feasible and plausible. It is DCED's understanding that those estimates were prepared with due consideration to the current and projected expenditures and revenues of the Haines

Borough and the City of Haines for the various listed components.

Revised areawide estimated revenues exceed revised areawide estimated expenditures as shown in Figures 21 and 22.

Although the Respondent Haines Borough did not dispute any of the specific projected revenues or expenditures in the Petition, the Respondent's Representative did express the following general concern about the budget (Responsive Brief, page 4).

Figure 17
Modified Projections of Areawide Revenues

Areawide Revenue (Revised)	Year One	Year Two	Year Three
Property taxes	\$1,159,177	\$1,203,226	\$1,248,948
Sales taxes (1.5%)	450,000	460,000	470,000
State and federal education funding	2,571,172	2,584,028	2,587,646
State shared business fisheries taxes	208,500	208,500	208,500
National forest receipts	492,000	492,000	492,000
Federal payments in lieu of taxes/Tongass	174,355	174,355	174,355
State revenue sharing	24,500	24,500	24,500
DPS Jail Contract and State Dispatch	89,389	89,389	89,389
Safe communities program	16,450	16,450	16,450
Other (interest, rents, penalties, etc)	290,500	295,206	299,406
Ports and harbors fees	172,029	200,000	232,520
Public library fees	3,300	3,500	3,700
Museum fees	48,000	48,000	48,000
Cemetery fees	2,100	2,100	2,100
Lodging Tax	98,000	98,000	98,000
Tour & Charter Tax	74,000	74,000	74,000
Transfer - Permanent Fund Earnings	195,000	195,000	195,000
Transfer - Land Fund Revenue	245,636	245,636	245,636
Totals	\$6,314,108	\$6,413,890	\$6,510,150

Figure 18
Estimated Townsite Service Area Revenues in the Petition

Service Area Revenue Source	Year One	Year Two	Year Three
Property taxes	\$636,738	\$649,536	\$662,527
Sales taxes (3%)	878,000	889,700	903,000
Animal control fees	3,000	3,000	3,000
Service area state revenue sharing	26,800	26,800	26,800
Liquor license tax	9,200	9,200	9,200
Water and sewer utilities revenues	600,929	606,337	611,794
Economic development (1% sales tax)	295,000	295,000	295,000
Capital improvement projects (grants)	455,000	462,000	470,000
Safe communities revenue	38,000	38,000	38,000
Totals	\$2,942,667	\$2,979,573	\$3,019,321

Figure 19
Adjustments to Estimated Townsite Service Area Revenues
Listed in the Petition

Service Area	Year One	Year Two	Year Three
Reduction in property tax revenues	(\$26,001)	(\$26,523)	(\$27,054)
Reduction in sales tax revenues (3%)	(62,327)	(63,097)	(63,998)
Reduction in animal control fees	(1,200)	(1,200)	(1,200)
Service area state revenue sharing	(10,815)	(10,675)	(10,525)
Reduction in water and sewer utilities revenues	(4,822)	(4,865)	(4,909)
Reduction in sales taxes for economic development (1% sales tax)	(23,109)	(19,466)	(15,333)
Increase Safe Communities revenue	4,870	4,870	4,870
Total adjustments	(\$123,404)	(\$120,956)	(\$118,149)

Figure 20
Modified Projections of Townsite Service Area Revenues

Service Area Revenue (Revised)	Year One	Year Two	Year Three
Property taxes	\$610,737	\$623,013	\$635,473
Sales taxes (3%)	815,673	826,603	839,002
Animal control fees	1,800	1,800	1,800
Service area State Revenue Sharing	15,985	16,125	16,275
Liquor license tax	9,200	9,200	9,200
Water and sewer utilities revenues	596,107	601,472	606,885
Economic development (1% sales tax)	271,891	275,534	279,667
Capital improvement projects	455,000	462,000	470,000
Safe communities revenue	42,870	42,870	42,870
Totals	\$2,819,263	\$2,858,617	\$2,901,172

Figure 21
Comparison Between Revised Projections for Areawide Revenues
and Expenditures

Areawide Projections (Revised)	Year One	Year Two	Year Three
Revenue	\$6,314,108	\$6,413,890	\$6,510,150
Expenditures	6,271,181	6,282,631	6,322,836
Surplus	\$42,927	\$131,259	\$187,314

Figure 22 Comparison Between Revised Projections for Townsite Service Area Revenues and Expenditures

Townsite Service Area Projections (Revised)		Year One	Year Two	Year Three
Revenues		\$2,819,263	\$2,858,617	\$2,901,172
Expenditures		2,749,623	2,814,326	2,861,208
Surplus		\$69,640	\$44,291	\$39,964

The costs of transition to a consolidated government were not provided by the petitioner. These costs could be substantial and should be included in any budget projection. The proposed consolidation costs in Fairbanks are estimated at \$5 million dollars.

The Respondent's Representative is either unaware or neglects to mention that the estimate of transition costs referred to above was made by a respondent opposed to the Fairbanks consolidation proposal. The petitioners for consolidation of local governments in Fairbanks vigorously contested the estimate of transition costs by that respondent.

The Fairbanks respondent's estimate of transition costs in the Fairbanks proceeding included millions of dollars for the cost of consolidating workspaces and equipment, including more than \$2.5 million for the relocation of City of Fairbanks Public

Works staff. An additional \$500,000 was allocated for consolidation of vehicle maintenance.

Even if the projection of transition costs in Fairbanks were accurate, it has little, if any, bearing on the likely transition costs for consolidation of local governments in Haines. Clearly, there will be some costs associated with transition, however, those costs are likely to be very limited given the characteristics of the two local governments involved. Moreover, local officials and other citizens of Haines should consider whether long-term savings from consolidation will more than offset any short-term transition costs.

For example, the City of Ketchikan estimates that consolidation of local governments in Ketchikan will reduce long-term operating costs by approximately \$1 million annually.

In the case of Ketchikan, the savings projections were based on a 1993 study conducted by independent consultants. The projected savings stemmed from the following:

- elimination of 8 elective local government offices;
- reduction in municipal manager's staff;
- reduction in municipal clerk's staff; and
- reduction in accounting staff.

Of course, in the case of Haines, any savings from the elimination of seven elective city positions will likely be offset by the addition of seven new elective positions for the school board of the consolidated borough that would then be separate from the assembly.

The Petitioner in this proceeding has offered no specific projections of potential savings. City

Figure 23
Assessed Value of Real Property in the Haines Borough 2000

Property Type	Fire SA #1	Fire SA #2	Fire SA #3	Fire SA #4	City	Remainder
Residential	\$1,955,400	\$2,233,050	\$6,134,900	\$6,805,335	\$39,582,200	\$5,379,850
Unimproved	2,342,700	1,038,350	7,078,150	5,819,450	24,780,800	8,796,470
Farm	0	0	0	0	65,900	0
Commercial	34,750	95,000	334,350	0	21,141,000	627,000
Industrial	520,900	0	0	918,400	3,620,100	5,978,300
Apartments	0	0	0	0	3,494,750	0
Mobile Home Parks	0	0	0	0	1,294,850	0
Total	\$4,853,750	\$3,366,400	\$13,547,400	\$13,543,185	\$93,979,600	\$20,781,620

officials have indicated, however, that “a management study would very likely reflect staffing efficiencies, such as in the obvious areas of accounting and municipal clerk.”

After reviewing the Ketchikan consolidation proposal at the request of the Ketchikan Gateway Borough, local government expert Vic Fischer concluded,

“While one may argue about the specific efficiencies and savings that may be achieved, local government economics and effectiveness are bound to improve through consolidation.” (Victor Fischer, *Preliminary Report on Municipal Consolidation Petition*, August 11, 2000, p. 4.)

(v) Economic Base of the Proposed Borough.

The Petition (Exhibit H, page 11 –12) states as follows regarding the economic base of the area within the Haines Borough.

Government (Borough, school district, City, and State), retail trade, business and transportation services, fishing, and forestry provide the majority of employment in the Borough.

According to the Alaska Department of Labor, the economy of the Haines Borough has been in transition from dependence upon manufacturing to greater dependence upon services and retail trade. Most of the manufacturing jobs in the Haines Borough are in seafood processing. Many of the new retail and services jobs are tourism related. Tourism is flourish-

ing in the area because of Haines’ strategic location. Haines is a marine highway port with road access to other parts of Alaska, Canada and the contiguous U.S. The number of cruise ship passengers visiting Haines more than doubled during the period from 1994-1997.

The total number of jobs in Haines in 1999 was 1,034. Fish processing requires significant seasonal labor and fish harvesting provides an important contribution to the economy. In 1995, 117 Haines residents held commercial fishing permits, earning an estimated \$4.8 million.

Although wages in the Haines Borough were generally lower than the statewide average, the lower per capita income in Haines was higher in Haines than statewide during 1994. The Department of Labor attributes this to the fact



Commercial property in Haines.

that Haines residents received a significantly higher proportion of income from dividends, interest, rent and proprietor's income (including fish harvesting) and a lower proportion from wages and salaries.

Obviously, the description of the Haines economy predates the previously noted announcement by Royal Caribbean International that it had canceled its cruise ship stops in Haines. While the Royal Caribbean development will clearly impact the local tourism industry, it certainly does not mean that Haines lacks the economic base to support local government – either the current structure or a consolidated city/borough government.

Employment data from the Alaska Department of Labor are available through April of this year. Those data indicate that 1,062 workers on average were employed within the Haines

Borough from January through April 2001. The average labor force during that time was estimated to be 1,243, leaving 181 people unemployed (14.6% of the labor force).

In comparison, employment within the Haines Borough during the first four months of 2000 averaged 1,032. The labor force at that time was estimated to consist of 1,224. That meant that 192 individuals were unemployed (15.7% of the work force).



Residential property in Haines.

Labor force statistics for the Haines Borough from 1996 through April of this year are provided as Appendix C to this report. Those statistics include the number of individuals in the labor force, employment, unemployment, and rate of unemployment.

(vi) Property Valuations.

According to the *Annual Report on Assessment and Taxation* filed by the Haines Borough with the State Assessor on September 9, 2000, taxable real property in the Haines Borough was assessed during 2000 as shown in the table in Figure 23 located on the previous page.

The total assessed value of taxable real property in the Haines Borough during 2000 was \$150,071,955. 62.6% of that value was within the City of Haines.

Figure 24
Assessed Value of Personal Property in the Haines Borough 2000

Property Type	Fire SA #1	Fire SA #2	Fire SA #3	Fire SA #4	City	Remainder
Mobile Homes	\$7,000	\$0	\$0	\$0	\$678,350	\$0
Machinery, Fixtures & Equipment	702,600	34,250	1,793,608	341,415	10,132,495	3,129,597
Aircraft	0	0	0	270,000	3,041,600	0
Boats & vessels	0	36,000	144,100	734,000	5,042,343	366,300
Total	\$709,600	\$70,250	\$1,937,708	\$1,345,415	\$18,894,788	\$3,495,897

Taxable personal property in the Haines Borough was assessed during 2000 as shown in the table in Figure 24.

The total assessed value of taxable personal property in the Haines Borough during 2000 was \$26,453,658. 71.4% of that value was within the City of Haines.

Of course, the assessed value figures exclude the value of property which is exempt from municipal property taxes under State law (see AS 29.45.030). For example, State law provides that municipal governments must exempt the first

\$150,000 in value of the primary residence of a person 65 years of age or older.

Also excluded from the assessment figures is the value of optional property tax exemptions granted by the Haines Borough.⁶² The Haines Borough has enacted optional property tax exemptions for senior citizens and disabled veterans (all value exceeding the mandatory \$150,000 exemption), inventories, recreational equipment, and property used for community purposes. The Borough estimates that the value of real property covered by the

optional exemptions during 2000 amounted to \$2,468,500, while the value of personal property covered by the optional exemptions amounted to \$2,607,000.

The assessed value figures also exclude the value of motor vehicles, since the Haines Borough has elected to have the State levy a biennial motor vehicle registration tax on its behalf pursuant to AS 28.10.431. The State Assessor estimated that the value of motor vehicles in the Haines Borough during 2000 was \$14,391,050.

In the course of making the annual full and true

⁶² State law gives local governments discretion in granting a number of optional property tax exemptions. For example, State law allows local governments to exempt value in excess of \$150,000 of the primary residence of a person 65 years of age or older. Voters must ratify that particular optional exemption.

Figure 25
Full and True Value of the Haines Borough

Item	City of Haines	Remainder of Borough	Borough Total
Local assessment of real property	\$93,979,600	\$56,092,355	\$150,071,955
Local assessment of personal property	18,894,788	7,558,870	26,453,658
Local estimated value of optional real property exemptions	2,468,500	0	2,468,500
Local estimated value of optional personal property exemptions	2,500,000	107,000	2,607,000
State estimated value of motor vehicles	8,503,268	5,887,782	14,391,050
State adjustments to local assessments of real property and local estimated value of optional real property exemptions	5,076,200	2,952,245	8,028,445
State adjustments to local assessments of personal property and local estimated value of optional personal property exemptions	44	2,048	2,092
Full and true value	\$131,422,400	\$72,600,300	\$204,022,700

value determinations, the State Assessor also con-

cluded that assessed values of taxable real property in the Haines Borough were slightly below market value.⁶³

Based on the factors noted above and others, the State Assessor made the determination of the 2000 full and true value of the Haines Borough as shown in Figure 25.

On a per capita basis, the full and true value of taxable property in the Haines Borough during 2000 was \$85,294. Utilizing full and true value figures on a per capita basis allows uniform comparisons to the property values of other organized boroughs in Alaska. The table in Figure 26 compares the per capita full and true value of the Haines Borough and the other fifteen organized boroughs in Alaska.

As shown in Figure 26, the per capita full and true value of the Haines Borough

⁶³ Local assessments are required to be at 100% of fair market value. The Haines Borough assessments were determined to be at 95% of value. It is not uncommon for tax levying municipal governments in Alaska to have such slight discrepancies. The State Assessor has the duty under State law to determine the annual full and true value of taxable property in organized boroughs, home rule and first class cities in the unorganized borough, and second class cities in the unorganized borough with a population of 750 or more. (AS 29.60.030(e)(1)-(3)).

Figure 26
2000 Per Capita Full and True Value of Taxable Property in Organized Boroughs

Borough	Full and True Value	2000 Census Population	Per Capita Full and True Value
North Slope Borough	\$10,859,450,480	7,385	\$1,470,474
Bristol Bay Borough	\$204,802,200	1,258	\$162,800
City and Borough of Juneau	\$2,632,035,700	30,711	\$85,703
Kenai Peninsula Borough	\$4,249,142,910	49,691	\$85,511
Haines Borough	\$204,022,700	2,392	\$85,294
All organized boroughs	\$46,288,408,210	545,129	\$84,913
Ketchikan Gateway Borough	\$1,116,923,700	14,070	\$79,383
City and Borough of Sitka	\$658,298,100	8,835	\$74,510
Kodiak Island Borough	\$977,967,800	13,913	\$70,292
Denali Borough	\$121,643,100	1,893	\$64,259
Municipality of Anchorage	\$16,574,726,820	260,283	\$63,680
Fairbanks North Star Borough	\$4,840,563,260	82,840	\$58,433
City and Borough of Yakutat	\$44,561,300	808	\$55,150
Matanuska-Susitna Borough	\$3,256,885,340	59,322	\$54,902
Northwest Arctic Borough	\$381,186,000	7,208	\$52,884
Lake and Peninsula Borough	\$69,030,900	1,823	\$37,867
Aleutians East Borough	\$97,167,900	2,697	\$36,028

during 2000 was slightly higher than the statewide average for all organized boroughs. The statewide average, of course, includes the figure for the North Slope Borough which, because of the substantial oil and gas properties there, accounted for nearly 25 percent of the assessed value in all organized boroughs in Alaska.

Because the North Slope Borough's assessed value is exceptionally large (more

than 17 times the statewide average) it skews all comparisons. Thus, it is more fitting to make comparisons to the median per capita full and true value of taxable property within Alaska's organized boroughs. During 2000, that figure was \$67,276. The per capita full and true value of taxable property within the Haines Borough during 2000 was 26.8% greater than the median figure for organized boroughs in Alaska.

The per capita value of taxable property in the Haines Borough was comparable to that of both the City and Borough of Juneau and the Kenai Peninsula Borough. Moreover, the per capita value of taxable property in the Haines Borough during 2000 was 34 percent higher than that of the Municipality of Anchorage.

(vii) Land Use.

The Petition (Exhibit H, page 12) states as follows regarding land use:

The Haines Borough, like other regions of Alaska, includes vast amounts of lands owned by the State and federal governments. There is also a significant amount of privately owned land. Privately owned commercial development is concentrated in the urban core of the Borough (the City of Haines and the area immediately adjacent to the City). Details about property values and other characteristics with respect to land use are provided elsewhere in this brief.

That description is identical to the discussion of land use that appeared in the 1998 consolidation proposal. DCED considers that description to be accurate with the exception of the discussion concerning commercial property in the area immediately adjacent to the City.

As a result of the previously noted 1999 annexation to the City of Haines, much of the adjoining commercial property is now within the corporate boundaries of the City of Haines. As shown in Figure 23, the Haines Borough reported that more than 95 percent of the

commercial property in the Haines Borough is within the City of Haines.

(viii) Personal Income.

The Alaska Department of Labor recently provided DCED with yet unpublished 1999 employment and payroll data for Alaska. (See Appendix D for data for the Haines Borough.) The figures do not include employment or payroll data for the following components of the economy:

- self-employed individuals;
- commercial fishermen;
- unpaid family help;
- domestic employees; and
- most individuals engaged in agriculture.

Earnings are defined as “all remuneration paid to workers covering services performed during the year, including commissions, bonuses, and other gratuities when furnished in connection with the job.”

In 1999, earnings from employment in the Haines Borough were reported to be \$23,314,718. That figure is equivalent to \$9,302 per resident of the Haines Borough.

Figure 27 on the next page, compares per capita earnings from employment in the Haines Borough to figures from the other fifteen organized boroughs and eleven census areas in Alaska.

Although well ahead of the Matanuska-Susitna Borough and slightly ahead of the Lake and Peninsula Borough, the Haines Borough lagged behind thirteen other organized boroughs in terms of per capita earnings from employment.

As noted above, however, commercial fishermen are not included in the employment and income data. Commercial fishing is an important segment of the Haines economy. As Figure 28 on page 49 shows, 91 residents of the Haines Borough were engaged in commercial fishing activity last year, generating slightly more than \$3,000,000 in gross earnings.

Perhaps another reason that the Haines Borough ranked relatively low in terms of earnings from employment may be that it has a high percentage of older residents. The 2000 Census indicated that 10.5% of the Haines Borough

Figure 27
1999 Per Capita Earnings from Employment

Borough or Census Area	1999 Yearly Earnings	July 1, 1999 AK Dept. of Labor Provisional Population Estimates	Per Capita Earnings
North Slope Borough	\$455,041,910	7,413	\$61,384
Denali Borough	\$69,348,379	1,871	\$37,065
Bristol Bay Borough	\$32,166,048	1,258	\$25,569
Aleutian Islands West Census Area	\$122,271,405	5,285	\$23,136
Aleutians East Borough	\$43,784,755	2,151	\$20,356
Juneau Borough	\$537,587,335	30,189	\$17,807
Anchorage, Municipality of	\$4,554,521,269	259,391	\$17,559
Valdez-Cordova Census Area	\$166,735,926	10,333	\$16,136
Ketchikan Gateway Borough	\$224,235,927	13,961	\$16,062
Northwest Arctic Borough	\$100,807,787	6,873	\$14,667
Yakutat Borough	\$10,463,939	729	\$14,354
Dillingham Census Area	\$65,347,194	4,731	\$13,813
Sitka Borough	\$112,399,765	8,681	\$12,948
Fairbanks North Star Borough	\$1,017,088,199	83,773	\$12,141
Kodiak Island Borough	\$163,954,960	13,989	\$11,720
Wrangell-Petersburg Census Area	\$74,853,029	7,137	\$10,488
Skagway-Hoonah-Angoon Census Area	\$37,092,739	3,541	\$10,475
Nome Census Area	\$96,175,002	9,311	\$10,329
Kenai Peninsula Borough	\$498,768,856	48,952	\$10,189
Haines Borough	\$23,314,718	2,475	\$9,420
Prince of Wales-Outer Ketchikan Census Area	\$61,288,831	6,589	\$9,302
Bethel Census Area	\$138,140,201	16,167	\$8,545
Lake and Peninsula Borough	\$15,228,953	1,791	\$8,503
Yukon-Koyukuk Census Area	\$53,272,506	6,372	\$8,360
Southeast Fairbanks Census Area	\$47,066,018	6,283	\$7,491
Matanuska-Susitna Borough	\$315,420,873	55,694	\$5,663
Wade Hampton Census Area	\$36,132,437	7,060	\$5,118

Figure 28
Permit and Commercial Fishing Activity
Haines Borough
Calendar Year 2000 (Preliminary Data)

Fishery Group	Number of Permit Holders	Number of People Fishing	Estimated Gross Earnings
All fisheries combined	128	91	\$3,009,518

Source: Commercial Fisheries Entry Commission
 < <http://www.cfec.state.ak.us/gpbycen/2000/mnu.htm> >

residents were 65 years of age or older. That figure compares to a statewide average of 5.7%.

When income from all sources is considered, the ranking of the Haines Borough moves up considerably. Figures from the U.S. Department of Commerce - Bureau of Economic Analysis indicate that per capita personal income in the Haines Borough was \$30,681 during 1999. That figure was 7.2% higher than the statewide average. As is shown in Figure 29 on the next page, the Haines Borough ranked ahead of ten other organized boroughs with regard to 1999 per capita personal income.

(ix) The need for and availability of employable skilled and unskilled people.

The Petition (Exhibit H, page 14) states as follows

regarding the need for and availability of employable skilled and unskilled people.

The two existing local governments in Haines currently employ the individuals needed to carry out a full range of local government services. Consolidation will not change the extent to which this particular factor is satisfied.

DCED considers that description to be accurate.

(x) The reasonably predictable level of commitment and interest of the population in sustaining a municipal corporation.

The Petition (Exhibit H, page 15) states as follows regarding the reasonably predictable level of commitment and interest of the population in sustaining a municipal corporation.

Residents of Haines have maintained the two local governments in Haines for

the past thirty years. This provides ample demonstration of the commitment and interest in sustaining a municipal corporation. Notwithstanding, the petitioners believe that voters will support a consolidation of the two local governments.

DCED considers that discussion to be accurate.

••••• c. Conclusion Regarding the Resources Standards.

Reasonably anticipated areawide revenues exceed reasonably anticipated areawide expenditures of the proposed consolidated borough by a small margin over the first three years of operation. Reasonably anticipated Townsite Service Area revenues also exceed reasonably anticipated Townsite Service Area expenditures by a small margin of over the first three years of operation.

Figure 29
1999 Per Capita Personal Income in Alaska

Area	Per capita personal income 1999
Bristol Bay Borough	\$43,996
Denali Borough	\$38,410
Juneau Borough	\$33,974
Anchorage Borough	\$33,813
Aleutians West Census Area	\$32,478
Ketchikan Gateway Borough	\$32,412
Haines Borough	\$30,681
Sitka Borough	\$29,895
North Slope Borough	\$29,025
Alaska	\$28,629
Valdez-Cordova Census Area	\$28,211
Aleutians East Borough	\$27,792
Wrangell-Petersburg Census Area	\$27,414
Yakutat Borough	\$26,478
Fairbanks North Star Borough	\$26,082
Dillingham Census Area	\$25,935
Skagway-Hoonah-Angoon Census Area	\$25,787
Kenai Peninsula Borough	\$25,478
Kodiak Island Borough	\$25,204
Southeast Fairbanks Census Area	\$22,629
Nome Census Area	\$21,258
Northwest Arctic Borough	\$21,090
Pr. of Wales-Outer Ketchikan Census Area	\$19,548
Lake and Peninsula Borough	\$19,533
Yukon-Koyukuk Census Area	\$19,126
Matanuska-Susitna Borough	\$18,615
Bethel Census Area	\$17,131
Wade Hampton Census Area	\$13,029

Source: U.S. Department of Commerce, Bureau of Economic Analysis
 < <http://www.bea.doc.gov/bea/regional/reis/drill.cfm> >

The value of taxable property in the Haines Borough during 2000 was \$85,294 per capita. That figure was 26.8% greater than the median figure for all boroughs in Alaska. Per capita personal income in the Haines Borough was \$30,681 during 1999. That figure was 7.2% higher than the statewide average.

These and other facts noted in this section of the report lead DCED to conclude that the resources standards set out in AS 29.05.031(a)(3) and 3 AAC 110.055 are satisfied with respect to the pending petition for consolidation of the City of Haines and the Haines Borough.

F. Standards Relating to Permissible Borough Classifications

1. Standards Established in Law

AS 29.06.090(a) states that two or more municipalities may consolidate to form a single general law or home rule municipality, except a third class borough may not be formed through consolidation.

2. Application of the Standards to the Haines Consolidation Proposal.

The Petitioner has proposed the creation of a new home rule borough. Based on that simple fact, it is evident that the standard set out in AS 29.06.090(a) concerning permissible borough classifications is satisfied by the pending proposal.

G. Standards Relating to Civil and Political Rights

1. Standards Established in Law

3 AAC 110.910 states that a petition will not be approved by the Commission if the effect of the

proposed change denies any person the enjoyment of any civil or political right, including voting rights, because of race, color, creed, sex, or national origin.

In addition, the Federal Voting Rights Act of 1965, codified as amended at 42 U.S.C. Section 1973, relates to this standard. The Voting Rights Act prohibits political subdivisions from imposing or applying voting qualifications; voting prerequisites; or standards, practices, or procedures to deny or abridge the right to vote on account of race or color or because a person is a member of a language minority group.

2. Application of the Standards to the Haines Consolidation Proposal.

..... a. Presumptions that the standards are met.

(i) Voting Rights Act standards have applied to local governments in Alaska for nearly thirty years.

The Federal Voting Rights Act was passed in 1965, three years prior to the incorporation of the Haines Borough. Standards were established at that time to determine which jurisdictions nationwide would be required to



preclear changes in voting rights and practices under Section 5 of the Act. If the U.S. Justice Department determined that a state or political subdivision maintained a "test or device"⁶⁴ and if the Census Bureau determined that fewer than 50% of the voting-aged residents of the jurisdiction either were registered to vote or voted in the 1964 presidential election, the state or political subdivision was covered by the Act.

At that time, Alaska had both low voter registration and turnout. The U.S. Justice Department also

⁶⁴ "Test or device" was defined as "any requirement that a person as a prerequisite for voting (1) demonstrate the ability to read, write, understand, or interpret any matter, (2) demonstrate any educational achievement of his knowledge of any particular subject, (3) possess good moral character, or (4) prove his qualifications by the voucher of registered voters or members of any other class."

determined that Alaska maintained a literacy test, which was a prohibited test or device. Therefore, at the outset, Alaska was among the jurisdictions that were required to comply with the preclearance provisions of Section 5 of the Voting Rights Act.

However, as expressly authorized by the Voting Right Act, the State of Alaska immediately filed a lawsuit asserting that it had not applied a test or device with the prohibited discriminatory purpose or effect. The Justice Department concurred with the State's position and Alaska was allowed to withdraw from the preclearance requirements.

The Federal Voting Rights Act was amended in 1970, at which time Alaska was again made subject to the preclearance requirements. With the concurrence of the Justice Department, Alaska again withdrew from the requirement to preclear changes affecting voting.

In 1975, the Voting Rights Act was amended again. The amendments expanded the definition of "test or device" to apply to a jurisdiction that conducted elections only in English if

5% or more of the population were members of a single language minority. Because Alaska conducted most aspects of its elections in English and because all Alaska Natives were considered to be members of a single language minority, Alaska and all of its local governments were once again required to preclear all changes affecting voting. The 1975 amendment was retroactive to cover any changes made after November 1, 1972. Alaska and its political subdivisions have since remained subject to the Section 5 Voting Rights Act requirements.

Thus, the previously noted 1975 annexation of an estimated 420 square miles to the Haines Borough and the 1978 annexation of the petroleum distribution facility at Lutak Inlet were subject to the Voting Rights Act review. The fact that those actions were not rejected under the Voting Rights Act creates a presumption that the current structure of borough government in Haines is not in violation of the provisions of the Voting Rights Act.

(ii) The Haines Borough and City of Haines asserted the standards were met in 1998.

The Haines City Council and the Assembly of the Haines Borough each formally stated in 1998 that "the prospective consolidation of the Haines Borough and the City of Haines will not deny any person the enjoyment of any civil or political right because of race, color, creed, sex or national origin."⁶⁵

The declarations made three years ago by the local governing bodies build on the presumption that the referenced standards in federal law and the Alaska Administrative Code are satisfied.

(iii) The Local Boundary Commission concluded that the standards were met in 1998.

The Local Boundary Commission concluded as follows with respect to this

⁶⁵ Haines Borough Resolution # 442 and City of Haines Resolution No. 97/98 – 30.

standard during the 1998 consolidation proceedings:⁶⁶

The Commission finds no evidence to suggest that consolidation of the two local governments in Haines will result in any violation of the federal Voting Rights Act. The Commission stresses that consolidation will not change the corporate boundaries of the Haines Borough. Further, the consolidation has been proposed to serve legitimate needs and to accomplish legitimate public policy objectives.

(iv) The U.S. Justice Department granted preclearance to the 1998 consolidation proposal.

On October 23, 1998, the U.S. Justice Department granted preclearance under Section 5 of the Voting Rights Act for the 1998 consolidation proposal. (See October 23, 1998 letter from Elizabeth Johnson, Chief, Voting Section, Civil Rights Division, U.S. Justice Department.) Specifically, the Justice Department precleared the following:

1. procedures for conducting the consolidation election;
2. consolidation of the City of Haines and the Haines Borough;

3. creation of the home rule consolidated borough governed by an eight-member assembly elected at large by designated seats from four residency districts, the districting plan, and the implementation schedule for electing assembly members;

4. election of a seven-member school board at large by the areawide voters and the implementation schedule for electing school board members;

5. dissolution of the Docks and Harbors Service Area, Medical Service Area, Mud Bay Land Use Service Area, Lutak Land Use Service Area, the Beach Road Local Improvement District Service Area, and the River Road Local Improvement District Service Area; and

6. creation of the Townsite Service Area.

Except for the change in the assembly form of representation and the addition of the Solid Waste Management Service Area among the list of service areas to be dissolved, the actions precleared in 1998 are identical to those associated with the pending Petition. As noted in (b)

below, areawide representation would increase minority voting strength in the portion of the Haines Borough outside the City of Haines. Further, the inclusion of the Solid Waste Management Service area among the service areas to be dissolved is a nominal change in terms of the interests of the Justice Department.

(v) The Haines Borough does not Assert that the Pending Petition Fails to Satisfy the Standards.

Nothing in the Responsive Brief of the Haines Borough claims that the Petition pending before the Local Boundary Commission fails to meet the standards relating to civil and political rights.

•••••
b. Evidence in the Current Proceeding Demonstrates Satisfaction of the Standards.

The composition of the proposed new borough's governing body (a six-member assembly) is identical to the composition of the current Assembly. However,

⁶⁶ 1998 Haines Consolidation Decision, page 13.

Figure 30
Racial Composition of the City of Haines and the Haines Borough
(based on 2000 Census)

Area	Total	White	Black	Native	Asian	Pacific Islander	Other	Multi-Racial
City of Haines	1,811 (100%)	1,442 (79.6%)	3 (0.2%)	251 (13.9%)	12 (0.7%)	2 (0.1%)	8 (0.4%)	93 (5.1%)
Portion of Haines Borough Outside City of Haines	581 (100%)	532 (91.6%)	0 (0.0%)	24 (4.1%)	5 (0.9%)	0 (0.0%)	2 (0.3%)	18 (3.1%)
Total – Haines Borough	2,392 (100%)	1,974 82.5%	3 (0.1%)	275 (11.5%)	17 (0.7%)	2 (0.1%)	10 (0.4%)	111 (4.7%)

the proposed form of the assembly representation (election of assembly members at large by voters throughout the borough) is different from the current form of representation (three members elected from within the City of Haines by City voters, two members elected outside the City from non-City voters, and 1 member elected at-large by areawide voters).

As is shown in Figure 30, the City of Haines is more racially diverse than the area of the Borough outside the City of Haines. As such, the proposed areawide form of representation would enhance minority voting strength in the Borough area outside the City of Haines. For example, Natives make up only 4.1% of the Haines Borough population outside

the City of Haines, but comprise 11.5% of the areawide population. The areawide form of representation would nearly triple the voting strength of Natives in the area of the Borough outside the City of Haines.

Conversely, areawide representation would dilute minority voting strength inside the City of Haines. However, such dilution would be relatively minor because there is only a slight difference in the relative number of Natives inside the City of Haines (13.9%) as compared to the areawide Native population (11.5%).

Areawide representation would dilute the Native voting strength inside the City of Haines by a factor of less than 0.2, but would increase the Native voting strength of the Borough area

outside the City of Haines by a factor of more than 2.8. For that reason, areawide representation might be preferred by some. However, DCED finds no evidence to conclude that the alternative of district representation would abridge the rights of minority voters, particularly since the current form of representation provides for a majority of the members of the Haines Borough Assembly to be elected on the basis of districts.

In addition to changing the form of representation of the assembly, consolidation will eliminate the seven elective offices in the City of Haines (mayor and six-member city council). In recent decisions involving consolidation proposals in Ketchikan and Fairbanks, the Commission empha-

sized the fact that Article X, § 1 of Alaska's Constitution encourages consolidation of local governments. Therefore, the Commission concluded that the elimination of elective city council positions is not pertinent with regard to this standard.

Consolidation will also create a school board that is separate from the borough assembly. As proposed in the Petition, the school board would be comprised of seven members elected at-large. As noted earlier, 73% of the borough school boards in Alaska are elected on an at large basis by an areawide vote. Again, the 1998 Haines consolidation proposal and the current proposal are identical with regard to the election of the school board.

••••• c. Conclusion Regarding the Civil and Political Rights Standards.

Given the foregoing, DCED concludes that no voting qualifications, prerequisites, standards, practices, or procedures will result from consolidation that would deny or abridge the right to vote on account of race or color or because a person is a member of a language minority group. DCED concludes further that the proposed consolida-

tion will not deny any person the enjoyment of any civil or political right, including voting rights, because of race, color, creed, sex, or national origin. Thus, the standards set forth in 42 U.S.C. Section 1973 and 3 AAC 110.910 are satisfied by the proposal to consolidate the City of Haines and the Haines Borough.

H. Standards Relating to Transition

1. Standards Established in Law

3 AAC 110.900(a) states that a petition for borough consolidation must include a practical plan to demonstrate intent and capability of the consolidated borough to extend essential borough services in the shortest practicable time after the effective date of consolidation.

3 AAC 110.900(b) states that a petition for borough consolidation must include a practical plan for the assumption of all relevant and appropriate powers, duties, rights, and functions presently exercised by the existing city and borough. The plan must be prepared in consultation with the officials of each existing

borough and city, and must be designed to effect an orderly, efficient, and economical transfer within the shortest practicable time, not to exceed two years after the effective date of the consolidation.

3 AAC 110.900(c) states that a petition for consolidation must include a practical plan for the transfer and integration of all relevant and appropriate assets and liabilities of the existing borough and cities to be consolidated. The plan must be prepared in consultation with officials of each existing borough and city to be consolidated, and must be designed to effect an orderly, efficient, and economical transfer within the shortest practicable time, not to exceed two years after the date of consolidation. The plan must specifically address procedures that ensure that the transfer and integration occur without loss of value in assets, loss of credit reputation, or a reduced bond rating for liabilities.

3 AAC 110.900(d) states that before approving a proposed change, the Commission will, in its discretion, require that the af-

fectured borough and cities execute an agreement prescribed or approved by the Commission for the assumption of powers, duties, rights, and functions, and for the transfer and integration of assets and liabilities.

2. Application of the Standards to the Haines Consolidation Proposal.

a. Presumptions that the standards are met.

(i) The Local Boundary Commission concluded that the standards regarding the transition plan were met in 1998.

The Commission concluded as follows regarding the Haines consolidation proposal initiated three years ago:⁶⁷

The Commission finds that the 31-page transition plan prepared by the Haines Borough and the City of Haines provides an excellent blueprint for transition to home rule borough government. The plan offers evidence that appropriate local government officials participated in the development of the plan. It also provides detailed explanations about the effects of consolidation. Further, the transition plan sets out a schedule for integration of assets, powers and duties of

the two existing local governments. It also provides for a detailed plan for the integration of debts of the City of Haines and the Haines Borough.

The transition provisions in the current Petition are very similar to those contained in the 1998 proposal. The similarity and 1998 LBC determination create a strong presumption that this standard is met.

b. Evidence in the Current Proceeding Demonstrates Satisfaction of the Standards.

The pending proposal includes a thirty-one-page transition plan (Exhibit J) and specific transition measures in the proposed home rule charter (Article XIX).

The transition plan, in conjunction with other elements of the Petition, clearly demonstrates the intent and capability of the proposed consolidated borough to extend essential borough services in the shortest practicable time after the effective date of consolidation.

The transition plan anticipates that the proposition for consolidation will be placed before the voters on October 2, 2001. However,

if the Commission approves the Petition, it cannot be stated with certainty that the election will be held on that date. In fact, given all of the procedural steps that have yet to be undertaken in this proceeding, it may not be possible to conduct the election on that date. The Director of the Division of Elections will set the election in accordance with AS 29.06.140(a).

The transition plan also speculates that if the Commission and voters approve consolidation, the second election required by AS 29.06.140(c) for the election of a new mayor, assembly, and school board will be held by December 2, 2002. The Director of Elections will also schedule the second election if one is held in this case. The date of the second election must be set within ten days of the certification of the results of the first election. The second election itself must be held sixty to ninety days from the date of the order of the election. Thus, any second election would be held within approximately two to three months of the certification of the results of the first election.

⁶⁷ 1998 Haines Consolidation Decision, page 14.

The transition plan included with the Petition serves as a realistic proposal for the assumption of relevant and appropriate powers, duties, rights, and functions presently exercised by the City of Haines and the Haines Borough. However, the transition plan inadvertently omitted reference to three existing service areas. These are the (1) Letnikof Subdivision Road Maintenance Service Area, (2) Riverview Drive Road Maintenance Service Area, and (3) Solid Waste Management Service Area. The first two service areas listed would remain in existence following consolidation. However, the Petitioner intends that solid waste management would be an areawide power of the consolidated borough and that the Solid Waste Management Service Area would be dissolved upon consolidation. DCED recommends that the Petition be amended to address the inadvertent omissions.

Section A of the transition plan indicates that current and former officials of the City of Haines and the Haines were consulted in the preparation of the transition plan. They include the Haines Borough Mayor, former Haines Borough Clerk, current Haines Borough Clerk,

Haines Borough Assessor/Land Manager, Haines Borough Planner, Haines Borough School Superintendent, Haines City Mayor, former Haines City Mayor, Haines City Administrator, former Haines City Administrator, Haines City Clerk, Haines City Treasurer, former Haines City Treasurer, and former Haines City Police Chief.

The current transition plan provides detailed explanations about the effects of consolidation. Further, it sets out a schedule for integration of assets, powers and duties of the two existing local governments.

Section I of the transition plan provides details for the integration of debts. It notes that the Haines Borough has no long-term debt outside of those obligations associated with a number of local improvement districts. Long-term debts of the City of Haines listed in the Petition and the City's Fiscal Year 2000 audit consist of the following:

1989 Water/Sewer Refunding Bonds. The City issued refunding bonds in 1989 in the amount of \$480,000 due in annual installments of \$15,000 to \$40,000 plus interest at varying rates from 7.3% to 7.9% until maturity in 2009. Bond proceeds were used to retire the City's 1974 bonds issues for water and sewer utility construction. The principal and interest on these bonds is currently paid from the 1.5% City sales tax dedicated to capital improvements. The Fiscal Year 2000 payment of principal and interest on these bonds amounted to \$48,638, or 9.4% of the \$515,422 proceeds from the 1.5% City sales tax for capital improvements during Fiscal Year 2000. The balance of the principal owed on these bonds at the end of Fiscal Year 2000 was \$275,000.



Water treatment plant located in the City of Haines.

Port Chilkoot Dock General Obligation Bonds.

The City issued general obligation bonds in 1995 in the amount of \$1,500,000 due in annual installments of \$50,000 to \$125,000 plus interest at varying rates from 4.5% to 5.5% until maturity in

2015. Bond proceeds were used for capital improvements to the Port Chilkoot Dock. The principal and interest on these bonds is currently paid from the 1.5% City sales tax dedicated to capital improvements and the 1% City sales tax dedicated for economic development and tourism. The Fiscal Year 2000 payment of principal and interest on these bonds amounted to \$129,608. That figure represents 15.1% of the proceeds of the 2.5% sales taxes from which the debt payments are made. The balance of the principal owed on these bonds at the end of Fiscal Year 2000 was \$1,300,000.



Port Chilkoot dock in Haines. Source: Alaska Office of Tourism.

Highland Estates Special Assessment Bonds.

The City issued special assessment bonds in 1986 in the amount of \$200,000 due in annual installments of \$3,300 plus interest at 9.625% until maturity in 2007. The principal and interest on these bonds is paid from proceeds through local improvement district assessments on the property owners. The balance of the principal owed on these bonds at the end of Fiscal Year 2000 was \$13,000.

Water System Revenue Bonds. The City issued water utility revenue bonds in 1993 in the amount of \$450,000. The principal and interest on these bonds is currently paid from the

City's Water Revenue Fund. The Fiscal Year 2000 balance due on these bonds was \$330,720.

Sewer System Revenue Bonds. The City issued sewer utility revenue bonds in the amount of \$1,700,000. The principal and interest on these bonds is currently paid from the City's Sewer Revenue Fund. The Fiscal Year 2000 balance due on these bonds was \$1,633,492.

Drinking Water Fund Loan. The Petition indicates that the City has borrowed \$150,000 to date from the Alaska Department of Environmental Conservation Drinking Water Loan Fund. The proceeds were

used in the construction of a 630,000-gallon water tank. The loan will be repaid through the Water Utility Enterprise Fund.

The Respondent's representative asserted on pages 4-5 of the Haines Borough's Reply Brief that "current City finances are in disarray" and that there has been "a pattern of budget problems and possible misrepresentations over the years by the City." The Respondent's representative also states, "We feel that because of the City's debt load and fiscal mistakes in the past that this petition is an attempt [to] obtain borough resources to pay down the City's debt."

The City of Haines responded to the assertions as follows in its Reply Brief (p. 3):

The City of Haines has an annual audit of its finances. While every government has its challenges (as the Borough has found out with their own tax software), the City of Haines is meeting those challenges and has met all accounting standards required. The City's General Fund Balance as of completion of the June 30, 2000 audit, was \$1,971,639. The City's financial position is sound. The Borough is misguided in its impression of their "resources" being used to pay down City debt. Under the pro-

posed Charter, use of the permanent fund for City debt would not be allowed. In fact, the Borough's permanent fund is better protected under the Proposed Charter than it is now.

DCED considers the Borough's assertion that the pending Petition is "an attempt [to] obtain borough resources to pay down the City's debt" to be unfounded and provocative.

The Respondent's Representative is perhaps unaware that Section 19.11(b)-(c) of the proposed home rule charter provides as follows regarding pre-consolidation debt:

(b) Not later than 180 days after the effective date of the consolidation, the assembly shall determine which assets of a former government provided benefit to an area larger than the former government prior to consolidation, or will provide such a benefit after consolidation. The tax obligation for bonded indebtedness, or other debt, incurred prior to consolidation with respect to such an asset shall be spread to such area not later than 18 months after the effective date of the consolidation. However, if sales tax provides revenue to meet such bonded indebtedness obligations, or if the debt is a general obligation of the municipality, the extension of any tax levy or general obligation for that purpose shall not become

effective in new areas until an ordinance extending that tax levy or obligation is approved by voters of the area into which the tax levy or obligation is proposed to extend.

(c) Pre-consolidation bonded indebtedness or other debt for sewage collection systems, water distribution systems and streets, even if determined to be used for the benefit of a larger area than that which incurred the debt, shall remain the tax obligation of the area that incurred the debt.

Thus, under the provisions of Section 19.11(c) of the proposed Charter, the debts for the previously noted 1989 Water/Sewer Refunding Bonds, Water System Revenue Bonds, Sewer System Revenue Bonds, and Drinking Water Fund Loan must remain with the Townsite Service Area (former City of Haines).

Since the Highland Estates Special Assessment Bonds are paid by assessments on property in the Highland Estates Local Improvement District, there is no basis for suggesting that any property other than that within the Highland Estates Local Improvement District will be involved in the payment of the \$13,000 principal and interest for that local improvement district.

The only remaining long-term debt of the City of Haines is the \$1,300,000 principal due on the Port Chilkoot Dock General Obligation Bonds. It is conceivable that, as outlined under Section 19.11(b) of the proposed Charter, the assembly of the consolidated borough may determine that (1) the Port Chilkoot Dock is an areawide facility, (2) that the debt should be assumed on an areawide basis, and (3) that the debt should be paid with areawide revenues. However, because sales taxes are used to fund those bonds, Section 19.11(b) of the proposed Charter specifically prohibits the extension of the debt or the sales tax to the area beyond the former City of Haines unless the voters outside the former City of Haines vote in favor of such.

.....
c. Conclusion Regarding the Transition Plan Standards.

DCED considers the transition plan in the Petition and the transitional measures in the Charter to offer an excellent guide for the transition to a consolidated borough government. As such, DCED concludes that the standards relating to transition set forth in

3 AAC 110.900(a)-(d) are satisfied with respect to the pending Petition. Again, assertions that the consolidation proposal is an effort to use resources of the Haines Borough to pay debts of the City of Haines are unfounded.

I. Standards Relating to Maximum Local Self-Government

1. Standards Established in Law.

Article X, § 1 of Alaska's Constitution states, in part, that, "The purpose of this article (Article X, Alaska's constitutional article on local government) is to provide for maximum local self-government."

2. Application of the Standards to the Haines Consolidation Proposal.

.....
a. Presumptions that the standards are met.

(i) The maximum local self-government standard was in place for nine years prior to the creation of the Haines Borough.

The provision of Alaska's Constitution relating to maximum local self-government has been in place

since 1959. The incorporation of the Haines Borough in 1968 and boundary changes to the Borough in 1975 and 1978 warrant the presumption that those actions were consistent with the constitutional principle at issue.

(ii) The Haines Borough and City of Haines asserted the standard was met in 1998.

Both governing bodies formally stated in 1998 that "consolidation of the third class Haines Borough and the first class City of Haines into a single home rule borough will promote maximum local self-government."⁶⁸

⁶⁸ Haines Borough Resolution # 442 and City of Haines Resolution No. 97/98 – 30.



Port Chilkoot in Haines. Source: Alaska Office of Tourism.

legal system that, to the maximum extent possible, allows local residents the flexibility to choose an appropriate structure of local government so they can address local affairs in the manner that they deem appropriate. Local residents have a broad range of choices

The affirmation by the Assembly of the Haines Borough and the Council of the City of Haines three years ago reinforces the validity of the presumption that the maximum local self-government standard is satisfied.

(iii) The Local Boundary Commission concluded that the standard was met in 1998.

Three years ago, the Commission concluded as follows concerning the constitutional principle of maximum local self-government as it relates to consolidation of local governments in Haines:⁶⁹

... consolidation of the City of Haines and the Haines Borough as a single *home rule* borough will promote maximum local self-government. For that reason, the Commission concludes that the consolidation of local governments in Haines is strongly favored by Article X, Section 1 of Alaska's constitution.

• • • • •
b. Evidence in the Current Proceeding Demonstrates Satisfaction of the Standards.

As a general rule, maximum local self-government in Alaska is achieved first and foremost through the extension of city or borough government to an unincorporated area. Doing so establishes a political and a

available to them. The principle of maximum local self-government is further supported by the broad powers given to city and borough governments under Alaska's Constitution and in the Alaska Statutes. All of these factors provide flexibility and encourage creativity on the part of local residents as to the manner in which they fashion their local government.

Since the City of Haines incorporated in 1910 and the City of Port Chilkoot incorporated in 1956, resi-

⁶⁹ 1998 Haines Consolidation Decision, page 3.



Local Government Committee meeting during the Constitutional Convention in 1954. Source: Anchorage Museum of History & Arts, Steve McCutcheon photographer.

dents of those two cities had structures in place at the time of statehood that served the constitutional principle of maximum local self-government. In August 1968, the Haines Borough was incorporated.

The incorporation of a borough that overlaps city governments has been characterized by the Local Boundary Commission as an action that creates redundant structures for local self-government within the overlapping areas.

The Constitutional Convention delegates envisioned that home rule would provide the highest form of local self-govern-

ment. However, the Commission concluded in the recent Fairbanks consolidation proceedings that the maximum local self-government clause of Article X, § 1 of the State Constitution is not necessarily a presumption or preference for home rule municipalities.

The Respondent's Representative wrote on behalf of the Haines Borough that "consolidation does not comply with the requirement for 'maximum local self-government.'" The Borough links its argument to the assertion that there is a constitutional and statutory preference for the City of Haines over the proposed Townsite Service Area.

The Local Boundary Commission rejected similar arguments in recent decisions concerning proposals for consolidation of local governments in both Fairbanks and in Ketchikan. The issue of constitutional policies concerning cities versus service areas is addressed as a separate standard in Section K of this chapter.

Dissolution of the Haines city government as a result of consolidation would not bring about any diminution of maximum local self-government for residents of the City of Haines. Maximum local self-government is not a matter of multiple local jurisdictions, but rather is a matter of local residents having access to local government and an optionally broad range of powers to pursue local government as they wish. That result would be achieved under the pending consolidation proposal.

••••• c. Conclusion Regarding the Maximum Local Self- Government Standards.

Based on the foregoing facts, DCED concludes that the Petition meets the maximum local self-government standards of Article X, § 1 because it provides the kind of local government

that has adequate flexibility to serve the needs of the residents of the greater Haines area in an efficient and effective manner.

J. Standards Established in Law Relating to Minimum of Local Governments

1. Standards Established in Law

Article X, § 1 of Alaska's Constitution states, in part, that, "The purpose of this article (Alaska's constitutional article on Local Government) is to provide for . . . a minimum of local government units."

2. Application of the Standards to the Haines Consolidation Proposal.

••••• a. Presumptions that the standards are met.

(i) The Haines Borough and City of Haines asserted the standards were met in 1998.

The Haines Borough Assembly and the Haines City Council both stated in 1998 that "consolidation of the third class Haines Borough and the first class

City of Haines into a single home rule borough will promote . . . a minimum of local government units." ⁷⁰

The proclamation by the Haines Borough Assembly and the Haines City Council in 1998 establishes a presumption that the minimum local governments principle is served by the proposal.

(ii) The Local Boundary Commission concluded that the standards were met in 1998.

Three years ago, the Local Boundary Commission concluded as follows regarding the minimum of local government units principle:⁷¹

Consolidation of the local governments in Haines will: (1) reduce the number of municipal corporations within the boundaries of the Haines Borough by 50%, (2) achieve greater equity, efficiency, and effectiveness in the delivery of local governmental services by in part, reducing the number of service areas and by offering additional opportunities for consolidation of service areas in the future, and (3) remove the limitation on the Haines Borough that new services can only be provided on a service area basis. Given these circumstances, the Local Boundary Commission concludes that consolidation is strongly supported

by the principle in Article X, Section 1 of Alaska's constitution favoring a minimum of local government units.

••••• b. Evidence in the Current Proceeding Demonstrates Satisfaction of the Standards.

In the context of Article X, § 1 of Alaska's Constitution, the phrase "local government unit" has been construed by the Alaska Supreme Court to include borough service areas. (See *Keane v. Local Boundary Commission*, 893 P.2d 1239, 1243 [Alaska 1995].) Moreover, Vic Fischer, an expert in Alaska local government and a former Constitutional Convention delegate, also construes borough service areas to be local government units in the context of Article X, §§ 1 and 5. (See *Final Report to the Local Boundary Commission Regarding the City of Haines' Petition to Annex 6.5 Square Miles*, Department of Community and Regional Affairs, October 1997.)

⁷⁰ Haines Borough Resolution # 442 and City of Haines Resolution No. 97/98 – 30.

⁷¹ 1998 Haines Consolidation Decision, page 5.

The Haines Borough argues that “Merely changing the form of the City to a service area does not reduce the number of local government units or comply with Article X, Section 1 of the Alaska Constitution.”

However, borough service areas are very distinct from city and borough governments. A borough service area is not a municipal government in any sense. In fact, it is not an entity. A service area has no capacity to sue or be sued. It lacks legislative powers, executive powers, and the power to tax. A borough service area is merely a defined area of a borough in which the borough government exercises different powers or provides different levels of service as compared to other parts of the borough.

The Haines Borough’s argument that the constitutional policy of a minimum of local government units can be met only if there is a net reduction in the number of local government units (again, including service areas) was unmistakably rejected in the recent Ketchikan consolidation proceeding. In that case, the number of local government units would actually increase if the voters approve consolidation. The

Ketchikan proposal would dissolve two existing local government units (City of Ketchikan and Ketchikan Gateway Borough) and create four new local government units (Municipality of Ketchikan, Ketchikan Service Area, Greater Ketchikan EMS Service Area, and Shoreline Service Area).

Constitutional expert Vic Fischer was retained by the Ketchikan Gateway Borough to review the pending Ketchikan consolidation proposal filed by the City of Ketchikan. Despite the arithmetic increase in the number of local government units, Mr. Fischer concluded that the pending Ketchikan consolidation proposal “meets the constitutional goal of maximizing self-government while *minimizing the number of government units.*”

What was relevant to Mr. Fischer and to the Local Boundary Commission in the Ketchikan proceeding was that the Ketchikan petition would reduce the number of

local governments (municipal corporations) that operate in the affected area from two to one. The most pertinent feature of that petition as it related to the standard at issue was that two local governments – two taxing and legislative jurisdictions – would be reduced to one. The same situation applies here.

Moreover, the Haines consolidation proposal results in a significant net decrease in the number of local government units. The pending consolidation proposal seeks to dissolve seven existing local government units (City of Haines, Haines Borough, Docks and Harbors Service Area, Medi-



Victor Fischer, former constitutional convention member and Alaska local government expert.

cal Service Area, Mud Bay Land Use Service Area, Lutak Land Use Service Area, and the Solid Waste Management Service Area). The consolidation proposal would create two new local government units (City and Borough of Haines and the Townsite Service Area). Arithmetically, the consolidation proposal decreases the number of local government units serving the greater Haines area by five.

It is also noteworthy that the Local Boundary Commission found in the recent proceeding for consolidation of local governments in Ketchikan and Fairbanks that there is a preference in Article X, § 1 for the gradual elimination of cities within boroughs. The Committee on Local Government at the Constitutional Convention considered a borough encompassing no city governments to be the ideal structure of municipal government in Alaska. The Local Boundary Commission also concluded with regard to both the recent Fairbanks and Ketchikan consolidation proposals that, “[t]he fact that new service areas are likely to be created in city-borough consolidations does not conflict with the minimum local governments clause of Article X, § 1.”

In 1971, the Alaska Supreme Court concluded that unification of local governments serves the minimum of local governments clause in Article X, § 1. The ruling stemmed from a challenge by the former home rule City of Douglas regarding the unification of local governments in the greater Juneau area. While “unification” is technically distinct from “consolidation”, both result in the reduction of the number of local governments. When the City of Juneau and the City of Douglas were abolished through unification in 1970, each was reconstituted as a separate urban service area with boundaries identical to the respective former cities. Therefore, the Court’s holding in that case that “[u]nification is consistent with the purpose expressed in article X, section 1 of minimizing the number of local government units” is relevant and applicable to the instant consolidation proposal. (*City of Douglas v. City and Borough of Juneau*, 484 P.2d 1040, 1044 [Alaska 1971].)

••••• Conclusion Regarding the Minimum of Local Government Units Standard.

Based on the foregoing facts, DCED concludes that the Petition serves the minimum of local governments principle set out in Article X, § 1 of Alaska’s Constitution.

K. Standards Concerning Constitutional Preference - City vs. Service Area

1. Standards Established in Law

Article X, § 5 of Alaska’s Constitution states that a new service area shall not be established if, consistent with the purposes of this article, the new service can be provided by an existing service area, by incorporation as a city, or by annexation to a city.

AS 29.35.450(b) states that a new service area may not be established if, consistent with the purposes of Article X of the state constitution, “the new service can be provided by an existing service area, by annexation to a city, or by incorporation as a city.”

2. Application of the Standards to the Haines Consolidation Proposal.

..... a. Evidence in the Current Proceeding Demonstrates Satisfaction of the Standards.

This matter was not an issue in the 1998 consolidation proposal. However, in the current proceeding, the Haines Borough argues that Alaska's Constitution (Article X, § 5) and State statutes (AS 29.35.450[b]) create a preference for a city government over a service area.

The Petition, in effect, proposes to dissolve the City of Haines and reconstitute it as the Townsite Service Area, a service area of the consolidated borough government.

On its face, Article X, § 5 of the Constitution and AS 29.35.450(b) seem to suggest a preference for not creating service areas where there is an existing city. In ordinary circumstances, that is a plausible reading. However, in the case of municipal consolidation, Article X, § 5 and AS 29.35.450(b) must be considered in the context of Article X, Section 1 and the facts of the Petition.

The Commission found in the recent cases involving consolidation in Ketchikan and Fairbanks that there is a plausible basis for the creation of new service areas as a way to flexibly meet the service needs of the residents of each of the proposed consolidated boroughs. Moreover, the Commission found in both cases that Article X, § 5 and AS 29.35.450(b) favor a structure that is "consistent with the purposes" of Article X, § 1. In this context, Article X, § 1 encourages a minimum of local government units. The Commission concluded with respect to the Ketchikan and Fairbanks consolidation proposals that both advanced the minimum of local government units clause in Article X, § 1 of Alaska's Constitution.

..... b. Conclusion Whether a Constitutional Preference Exists for a City Government Over a Service Area.

Based on the foregoing facts, DCED concludes that there is no constitutional preference for a city government over a service area when it comes to a municipal consolidation. DCED concludes further that the Haines consolidation pro-

posal serves the principles set out in Article X, § 5 of the Constitution of the State of Alaska.

L. Standards Regarding Best Interests of the State

1. Standards Established in Law.

In order to approve the consolidation proposal, AS 29.06.130(a) requires the Local Boundary Commission to determine that the proposal serves the "best interests of the state".

DCED views the "best interests of the state" to mean the broad policy benefit to the citizens of Alaska. In this case, "the state" does not refer to the corporation, the State of Alaska.

In this context, the best interests of the state is a concept applied by the Local Boundary Commission on a case-by-case basis. A determination of the best interests of the state is substantially guided by the applicable provisions of the Alaska Constitution, Alaska Statutes, and Alaska Administrative Code. It reflects the exigencies of any petition as is necessary to develop appropriate local

government boundaries which, in turn, serve the balanced interests of citizens in the area proposed for change, affected local governments, and other public interests which the Local Boundary Commission, in its discretion, considers to be relevant.

The Commission has proposed the following regulations interpreting and implementing the best interests of the state standard.

Proposed 3 AAC 110.065 BEST INTERESTS OF STATE. In determining whether incorporation of a borough is in the best interests of the state under AS 29.05.100(a), the commission will, in its discretion, consider relevant factors, including whether incorporation

(1) promotes maximum local self-government;

(2) promotes a minimum number of local government units;

(3) will relieve the state government of the responsibility of providing local services; and

(4) is reasonably likely to expose the state government to unusual and substantial risks as the prospective successor to the borough in the event of its dissolution.

2. Application of the Standards to the Haines Consolidation Proposal.

..... a. Presumptions that the standards are met.

(i) The Haines Borough and City of Haines asserted that the 1998 proposal served the best interests of the state and others.

The Haines Borough Assembly and the Haines City Council both stated in 1998 that “consolidation of the Haines Borough and the City of Haines will serve the balanced best interests of the State of Alaska, the territory proposed for consolidation, and the municipal governments to be consolidated into a single home rule borough.”⁷²

The declaration by the Borough Assembly and the Haines City Council in 1998 establishes a presumption that consolidation serves the broad public interests.

..... b. Evidence in the Current Proceeding Demonstrates Satisfaction of the Standards.

The City of Haines states in its Petition that since its proposal meets all of the other standards regarding consolidation, it also meets

the best interests standard. In contrast, the responsive brief of the Haines Borough asserts that, “We feel the proposed consolidation is contrary to the best interests of the Borough, the City, and the residents.”

DCED concluded earlier in this chapter that the Haines consolidation proposal serves the maximum local self-government clause in Article X, § 1 of Alaska’s Constitution. Moreover, DCED concluded that the Haines consolidation proposal fulfills the minimum of local governments principle set out in Article X, § 1 of the Constitution. Additionally, DCED concluded that the consolidation proposal serves the principles relating to service areas set out in Article X, § 5 of the Constitution. Thus, the consolidation proposal is beneficial to the interests of the State.

In addition to the constitutional principles addressed above, it is relevant to note with regard to this standard that consolidation of the City of Haines and

⁷² Haines Borough Resolution # 442 and City of Haines Resolution No. 97/98 – 30.

the Haines Borough would result in the reconstitution of the Haines Borough, Alaska's only third class borough, as a home rule borough.

Third class boroughs were authorized by the legislature in 1968 after voters in Haines rejected three prior proposals for incorporation of first or second class boroughs. (See Appendix E for a history of the incorporation of the Haines Borough.) In 1985, however, the legislature precluded the formation of new third class boroughs. For example, AS 29.06.090(a) states (emphasis added):

Two or more municipalities may merge or consolidate to form a single general law or home rule municipality, except a third class borough may not be formed through merger or consolidation.

The third class borough was originally conceived principally as a regional municipal school district with taxing powers. Hence, its areawide powers were limited to only two functions – education and taxation. That restriction remains in place today.

In contrast, all other organized boroughs in Alaska are required by law to exercise areawide planning,

platting, and land use regulation in addition to education and taxation. In a third class borough, State law shifts the duty for planning, platting, and land use regulation to first class cities like the City of Haines. The City of Haines is the only city government within an organized borough in Alaska that is required by State law to exercise planning, platting, and land use regulation powers.

However, the ability of the City of Haines to effectively exercise planning powers is limited to the area within its corporate boundaries. Municipal planning, platting, and land use regulation within third class boroughs outside of first class cities can only occur on a piecemeal basis through service areas. As noted previously, two such service areas exist in the Haines Borough.

From DCED's perspective, the following editorial from the January 19, 2001 edition of the *Chilkat Valley News* reflects the importance of areawide planning capability in the Haines area.

If you're interested in the way land is used in the Chilkat Valley, speak now or forever hold your peace.

Six separate but related planning efforts are under way. To work, they'll need

to incorporate comments from a broad spectrum of residents that accurately represent community sentiment.

In review, the planning projects are: rewriting City of Haines land use code, developing a plan for the Chilkoot River Corridor, writing a tourism plan, creating a city waterfront public use plan, reviewing uses and land designations on Department of Natural Resources property and rewriting the Alaska Chilkat Bald Eagle Preserve management plan.

Although interrelated, the plans are moving ahead separately and to avoid developments that are contradictory or counterproductive, some central oversight may be necessary.

Ideally, the plans will provide a blueprint for using the valley and sharing it in a fair and friendly manner. But for that to happen, residents have to participate in their creation, then abide by the guidelines they establish.

As noted previously, approximately 85% of Haines Borough residents already receive planning, platting, and land use regulation services from a local government. However, it is carried out within three different jurisdictions (City of Haines, Mud Bay Land Use Service Area, and Lutak Land Use Service Area).

Another broad public policy concern regarding third class boroughs is the lack of authority to exercise areawide powers other than education and taxation. All other organized boroughs in Alaska have the discretion, typically subject to voter approval, to exercise a full range of municipal services on an areawide basis (any power not otherwise prohibited by law or charter). In many cases, boroughs must obtain voter approval to exercise additional areawide powers. Voters in the Haines Borough lack that option. Consequently, there has been what some might construe to be an excessively liberal expansion of the definition of “education powers” of a third class borough. For example, under its areawide “education powers”, the Haines Borough operates the Haines Public Library, the Sheldon museum, and the Chilkat Center for the Performing Arts.

Over time, the concept of a third class borough as a school district with taxing powers has changed. Today, a third class borough is authorized to exercise one

non-areawide power (hazardous substance control under AS 29.35.220[e]). It may also exercise the full range of municipal services on a service area basis (AS 29.35.220[d]). The Respondent’s Representative commented in the Haines Borough’s Responsive Brief as follows regarding the contemporary functions of the Haines Borough:

The Borough provides many local government services. These include education, taxation, hazardous substances, library services, museum, elections, and community youth development areawide. Solid waste management, planning, platting and land use regulation, fire service, emergency medical service, road maintenance, docks & harbors and local improvement districts, and disaster emergency services are provided by service area.

The City of Haines offers the following comments in its Reply Brief regarding the capabilities of the third class Haines Borough:

. . . there comes a time where such a classification can be “outgrown” and efficiencies achieved through consolidation. In addition, Borough voters themselves expressed their dissatisfac-

tion with the Third Class Borough in October of 1998. When asked if they preferred the Third Class Borough as the form of government, the majority said no.

• • • • • c. **Conclusion Regarding the Best Interests Standards.**

Based on the foregoing facts, DCED concludes that the proposed consolidation of the City of Haines and the Haines Borough is in the broad public interest. As such, the public interests standard set out in AS 29.06.130(a) is satisfied in this case.

M. Other Considerations

As noted in Chapter 1, the Local Boundary Commission has the discretion to approve or deny a petition even if it determines that the proposal meets all applicable standards. This discretion reflects the fact that the Commission was, in the words of the Alaska Supreme Court, created under Alaska’s Constitution to “undertake a broad inquiry into the desirability

of creating a political subdivision.” (*Mobil Oil Corporation v. Local Boundary Commission*, 518 P.2d 92, 97 [Alaska 1974]) The Supreme Court noted further that the work of the Commission “involves broad judgments of political and social policy.” (*Ibid.*, p 98)

Of course, the Commission must have a rational and reasonable basis for whatever action it takes on the pending Petition. If the Commission concurs with DCED’s assessment in Sections B – L of this chapter that the pending Haines consolidation proposal meets the applicable standards, the Petition is likely to be approved unless the Commission finds a clear and compelling basis rooted in broad public policy interests to reject the proposal.

This section of the report examines issues and concerns raised by the Respondent and correspondents that have not been addressed under the preceding examination of the standards. It gauges whether there are other relevant factors that the Local Boundary Commission should consider in this proceeding.

1. Comments from the Respondent and correspondents.

..... a. Perception that consolidation means “more government.”

Louis Nelson wrote a one-page letter concerning the consolidation proposal on February 5, 2001. Nine others signed the letter. The letter predicts that consolidation will be rejected by the voters because it promotes “too much more big government” and that it will result in “more costs, more taxes, and more control on people.” The letter indicates that “we seem to be losing our democracy.” It states that “We need less government and more education.”

Mr. Nelson’s letter also makes reference to Haines Borough Resolution # 512 adopted December 19, 2000 in opposition to consolidation. That resolution was addressed in the Executive Summary. Additionally, Mr. Nelson’s letter included a copy of a form letter from the Center for Arts in the Basic Curriculum, headquartered in Washington, D.C. The form letter stresses the

benefit of music in the core curriculum of schools.

The City of Haines responded as follows to Mr. Nelson’s letter in its Reply Brief:

Mr. Nelson fears “too much more big government”. To the contrary, this petition will streamline many governmental functions and eliminate some units altogether. The consolidated government will also separate the school board from the legislative body. This could improve responsiveness regarding his desire to see more music teachers in the schools.

Mr. Nelson and the others who signed the February 5th letter perceive that consolidation means an expansion of government. In contrast, the Petitioner asserts that consolidation will streamline many governmental functions and eliminate some units altogether. Both are correct in a sense.

As indicated in Section A of Chapter 1, consolidation would bring about a number of changes in local government. For example, the consolidated borough government would extend planning, platting, and land use regulation to that 15% of the Haines Borough popula-

tion presently outside the City of Haines, Mud Bay Land Use Service Area, and Lutak Land Use Service Area. Some segment of that 15% of the population may perceive the change as “more government” in the sense that consolidation would extend certain local governmental functions to areas where such services have not been previously provided.

For others, however, the change in planning can be legitimately perceived as “less government.” If consolidation occurs, planning would be provided on an areawide basis by a single entity. In contrast, local planning is currently delivered on a piecemeal basis by multiple governmental units.⁷³

In a sense, the proposed extension of planning and other functions to those areas of the Haines Borough presently outside any local planning jurisdiction is analogous to the extension of local government to an unincorporated area as

discussed regarding the maximum local self-government principles. Such would establish a political and a legal system that, to the maximum extent possible, allows local residents the flexibility to choose an appropriate structure for planning, platting, and land use regulation so they can manage local affairs in the manner they deem appropriate.

State law provides tremendous flexibility and encourages creativity on the part of local residents as to the manner in which they exercise local planning and other responsibilities. This is particularly the case with home rule local governments such as the proposed City and Borough of Haines.

For the most part, however, the changes brought about by the pending consolidation Petition would be identical to those proposed in 1998. Both the Haines Borough and the City of Haines viewed the 1998 proposal as a way to provide more efficient and effective

local government. Readers are encouraged to review the characteristics ascribed to the 1998 proposal by the Haines Borough and the City of Haines summarized in Figure 3 of the Executive Summary.

•••••
b. Lack of a joint City-Borough consolidation effort.

Ron Jackson wrote on February 12, 2001 that he believes that there may be advantages to combining some aspects of local government. However, Mr. Jackson does not support a proposal initiated solely by the City of Haines. Robert and Margaret Andrews wrote on February 27 to express concern that the pending consolidation Petition is “completely unilateral” and that the consolidation efforts “lack the crucial elements of cooperation, camaraderie and trust, without which, little of consequence can be accomplished.” Additionally, Laurie Dadourian states in her March 2, 2001 letter

⁷³ Planning, platting, and land use regulation in the Haines Borough is currently undertaken by or on behalf of three different local government units –City of Haines, Mud Bay Land Use Service Area, and Lutak Land Use Service Area. Additionally, the State of Alaska has planning responsibilities in the area of the Borough outside those three units. For example, under AS 40.15.070(b), the State of Alaska is the platting authority in all areas of the Haines Borough outside the City of Haines, the Mud Bay Land Use Service Area, and the Lutak Land Use Service Area.

that, “I am strongly against consolidation the way the city is pushing for it. There are other alternatives that much better suit this community and I think it’s well worth the wait to do this for the good of all Borough and City residents.”

The City responds in its Reply Brief that the law allows it to independently petition for consolidation.

The City is correct that State law permits a single municipal government to petition for consolidation. In fact, unilateral petitions to the Local Boundary Commission are the custom. Indeed, DCED staff who have served the Commission since 1980 recall the 1998 Haines consolidation petition as the only joint petition received by the Commission in the past 21 years.

Additionally, for those consolidation critics who assert that unification is a superior process, it is fitting to note that unification may also be initiated unilaterally by a borough assembly.

Lastly, it is noted that the Haines Borough itself has filed unilateral petitions with the Local Boundary Commission. Those petitions resulted in annexations

to the Haines Borough in 1975 and 1978. The issue of prior annexations by the Haines Borough is addressed later in this section of the report (see subsection M-1-l, “Perception that ‘the City’ is deceitful, scheming and unjust”.)

All of this notwithstanding, DCED believes that it would be ideal if the pending Petition were a joint effort of the Haines Borough and the City of Haines.

Opposition to the proposal by the Borough, however, should not preclude the City of Haines from bringing forward a proposal that City officials believe will serve the best interests of all residents in the Haines Borough. There is ample opportunity during the remaining steps in the consolidation process to address any legitimate concerns of the Haines Borough.

••••• c. Perceptions about the manner in which the Petition was prepared.

Margaret Piggott wrote on March 4, 2001 indicating that she is strongly opposed to consolidation. She expresses resentment over “the way this has been pushed over us by City

councilors who do not represent me.” She also expresses the view that there has been little public input on the proposal. Ms. Piggott seems to regard the current Petition as being wholly unrelated to the 1998 proposal in that she also notes in her letter that “We voted on this just a short time ago *after a lot of work was done on consolidation, with many open forums.*” (Emphasis added)

Robert and Margaret Andrews also comment on this matter. Their letter describes the pending consolidation effort as “rushed and haphazard.” Scott Carey expressed the view in his March 9, 2001 letter that the current Petition was prepared with “little or no public debate – unlike the first effort – and seems to be driven by the personal agenda of a few people on the Haines city council.” Michael D. Ward also indicates in a letter received March 9, 2001, that he was a supporter of consolidation in the past, but “After watching Mayor Otis and the council run roughshod over the community, [he does] not support consolidation.” Lastly, Mr. Weishahn comments on this matter in his letter of March 5, 2001 as follows:

There is little respect for the city's slipshod consolidation petition and its continued efforts, not unlike the past repeated efforts of would-be capital movers on the state level...to vote and revote when consolidation has been voted down by voters previously. What part of NO does the city not understand?

The City stresses in its Reply Brief, however, that the current Petition is similar in most respects to the 1998 proposal prepared jointly by the Haines Borough and the City of Haines.

The City takes the view that the current Petition is an extension of the 1998 proposal. In that respect, the City states that when voters consider the pending consolidation proposal it will represent the "culmination of over 3 years of public discourse and debate."

The City also emphasizes that consolidation cannot be forced on residents since it requires approval by Borough voters areawide.

d. Solid waste litigation.

Robert and Margaret Andrews express the view that the City of Haines went "after the 'deep pockets' [of the Haines Borough]" in the solid waste management litigation. Additionally, Michael Ward and others also convey critical comments about the manner in which the City of Haines dealt with the previously noted solid waste litigation.

Whether the dispute between Haines Sanitation, Inc., and the City of Haines should have been resolved without bringing the Haines Borough into the litigation is a matter best left to the judgment of local officials and citizens. However, assertions that the City of Haines went after the deep pockets of the Haines Borough appear unfounded.

From a public policy standpoint, solid waste management seems to be a legitimate areawide concern rather than a matter of interest limited strictly to

the City of Haines. Moreover, valid questions existed at the time the litigation was filed as to the respective roles of the City of Haines and the Haines Borough regarding solid waste management. Approximately three months before Haines Sanitation initiated litigation against the City of Haines, the Haines Borough had created the Solid Waste Management Service Area encompassing nearly all of the Haines Borough, including the City of Haines.⁷⁴ State law (AS 29.35.330[d]) provides that:

If a majority of the votes cast on the question of adding . . . a power to be exercised in a service area in a third class borough if favorable, the borough shall assume the added power within 30 days after certification of the election results. (emphasis added)

Legitimate questions existed at the time whether the creation of the Solid Waste Management Service Area legally obligated the Borough to assume pre-existing waste management contractual obligations between the City of Haines and Haines Sanitation.⁷⁵ The Superior Court later determined that the Haines Borough did not have such an obligation. However, the Court also recognized that

⁷⁴ The Haines Borough Solid Waste Management Service Area was created by Ordinance Number 99-18 on November 16, 1999. It encompasses all of the Haines Borough except one square mile in the Katzeihin River drainage

⁷⁵ See March 21, 2000 memorandum from Simpson, Tillinghast, Sorensen & Lorensen regarding basis for asserting that the Haines Borough had a legal responsibility to assume solid waste management functions of the City of Haines.

other key issues involving the respective roles of the City and Borough regarding solid waste were unresolved. (See *Haines Sanitation, Inc., v. City of Haines, et al.*, Order Denying Motion to Dismiss Third-Party Complaint, 1JU-00-361 CI.) Ultimately, the City of Haines settled the matter out of court.⁷⁶

DCED recognizes that the solid waste litigation is the ostensible reason that relations between the City of Haines and the Haines Borough seem to have become increasingly strained. DCED further recognizes that chances for a smooth and successful consolidation would likely be enhanced if both governments supported consolidation. However, unfortunately, conflicts between city and borough governments are often present throughout Alaska. Indeed, conflicts between local governments are typically listed among the fundamental reasons for consolidation.

.....
e. Perceived motives for the proposal.

A few of the consolidation critics suggest that the consolidation Petition is motivated by financial considerations designed to benefit City residents.

Robert and Margaret Andrews indicate that the “City of Haines seems to have some grand plan that includes the resources of the Borough of Haines.” Margaret Piggott states that she feels “strongly that the reason for a united government is to tax the valley residents to enrich the City.” Richmond W. Tolles states in his March 6, 2001 letter that, “I do not believe that this consolidation will do any of the residents, city or rural any good, the only very apparent thing it will clear up is the [city’s] debt.” Carolyn Weishahn states in her March 9, 2001 letter that, “This latest attempt at consolidation clearly points to a power play by the city to gain access to the borough assets and a broader tax base to fund its projects.”

To the extent that those comments imply that City officials are scheming to somehow take unfair advantage of the Borough residents outside the City of

Haines, DCED considers such comments to be unfounded. The Representative of the Respondent Haines Borough made similar assertions that were dispelled in Section H of this Chapter of the report. Such concerns are addressed further in Section M-1-l.

.....
f. Repeated efforts to consolidate.

The letter from Robert and Margaret Andrews indicates that there should be a limit on the number of times that a consolidation proposal may come forward. Ms. Piggott also expressed alarm “at these constant attempts to unify the City and Borough.” She indicates that, “. . . it’s beginning to look as if we continue to vote on consolidation until people vote ‘yes.’ Then the issue will go away.”

As also noted earlier, there are indeed limits on the resubmission of consolidation proposals. The

⁷⁶ The result, it appears, has been the creation of a circumstance in which two local governments now have some ill-defined overlapping jurisdiction for solid waste management in an area of the Haines Borough in which more than three-quarters of the population lives. This seems to be not at all what was intended when the Constitutional Convention delegates wrote in Article X, § 1 of the State Constitution that, “The purpose of this article is to . . . prevent duplication of tax-levying jurisdictions.”

pending Petition fully complies with those limitations.

It is important to keep in mind that nearly as many people voted for consolidation in 1998 as voted against it. The fact that there have been a number of significant changes in circumstances associated with the prospect for consolidation of local governments in Haines since 1998 creates a legitimate basis for further consideration of the proposal. These changes include (1) a substantial increase in the number of residents of the Haines Borough that are now served by two local governments, (2) conflicts between the City of Haines and the Haines Borough, (3) favorable changes to AHFC's rural housing loan program in the context of consolidation, and (4) economic challenges facing the greater Haines area.

•••••
g. Changes in services resulting from consolidation

Ms. Piggott indicates that "I cannot see us getting any extra services, and I fear we will lose representation." Gene Kennedy states in his March 2, 2001 letter that, "I cannot believe I would benefit from services which would become required.

And I believe the tax burden to finance such services would become onerous."

Clearly, there will be changes in the level of services if consolidation occurs. These were carefully outlined in Chapter 1, Section A.

•••••
h. Effects on Assembly representation.

Ms. Piggott, Scott Carey, and others worry that consolidation will bring about City domination of the Assembly and that the Assembly will then disregard the interests of the non-City residents.

If City residents were truly intent on dominating the Borough Assembly and showing indifference or disregard when it comes to the interests of the non-City residents, maintaining the current city-borough structure of local government certainly will do nothing to shelter non-City residents.

As is addressed in Section B of the Executive Summary and also in Section G of Chapter 3, the Haines Borough Assembly is required to take up the issue of apportionment irrespective of the consolidation proceedings.

The current Haines Borough Assembly is clearly malapportioned. Five members of the current Assembly are elected from districts (three from within the City and two from the area outside the City). Based on the 2000 Census population of 2,392, the statistical ideal level of representation is 478 residents for each assembly member elected by district (2,392 divided by 5 equals 478.4).

However, each of the three Assembly members elected from the "City district" represents 604 residents (1,811 divided by 3 equals 603.7). Assembly representation in the City district deviates from the ideal by 126 *more* residents per Assembly member or + 26.4%.

In contrast, the 581 non-City residents of the Haines Borough have the equivalent of one assembly member per 291 residents. Assembly representation in the non-City district deviates from the ideal by 187 *fewer* residents or -39.1%.

The overall deviation between the citizens of the Haines Borough that are under-represented (i.e., those living within the City of Haines) and those citi-

zens of the Haines Borough that are over-represented (i.e., those living outside the City of Haines) amounts to 65.5% (26.4% plus 39.1%).

The Alaska and U.S. Supreme Courts presume that any deviation in excess of 10% violates the equal protection clauses of the respective constitutions. If there is some rational policy to support a slightly smaller deviation, such might be allowed. A deviation in excess of 10% has been allowed only in three instances at the federal level. In each case, the deviation was not excessively greater than the 10% threshold. In the case of the Haines Borough, the deviation amounts to 6.5 times that threshold.

Thus, concerns over apportionment of the assembly are by no means limited to the pending consolidation proposal.

⁷⁷ Mr. Carey alleges that “LBC staff have stated at public meetings in Haines that consolidation will not be cheaper.” LBC staff has no recollection of such statements and believes that there are opportunities for cost savings in a consolidated local government for Haines.

i. ••••• Effect on cost of operations of local government. •••••

Ms. Piggott indicates that she does not anticipate cost savings to result from consolidation. Scott Carey also asserts that consolidation will not be cheaper than the current structure.⁷⁷

The City responds to such concerns in its Reply Brief by stating:

The status quo is perhaps the most harmful scenario for Haines. The cost of lost opportunity and inefficiency has been enormous.

j. ••••• Opposition to consolidation regardless of variables. •••••

Ron Weishahn wrote that he would oppose consolidation of the City of Haines and the Haines Borough regardless of the following fundamental variables:

- (1) the form of assembly representation (areawide or district representation, although he prefers the latter);
- (2) “whether or not the consolidation Petition was submitted after a careful and exhaustive public involvement process” (which he indicates it was not); and

- (3) “whether or not the city has proven its good faith relationship with the borough in the recent Haines Sanitation lawsuit fiasco” (which he indicates it has not).

The City notes in its Reply Brief that, “Mr. Weishahn admits to being opposed regardless of steps taken to appease his concerns.”

Mr. Weishahn also asserts that consolidation has not been successful in Alaska because it is an “inauthentic attempt for one aspect of a populated segment to dominate and manipulate a less populated governmental segment of a community by allowing, requiring, area-wide voting where the dominant population city centers can disregard the needs of the outlying citizens.” He states further that, “If Haines governments are ever going to be joined at the hip, it must be at the desire of both city and rural residents, wherein a vote so indicates that preference by each would-be segment separately as Unification and not Consolidation promotes.”

Mr. Weishahn expresses the view that the voting procedures associated with consolidation allow one

segment of the population to dominate another. In essence, he finds the concept of majority rule, at least as applied to consolidation, to be objectionable. As is addressed in the Executive Summary, voting procedures for consolidation treat every voter identically – they favor none.

In contrast, the unification voting procedures allow one segment of the population to dominate another. As noted in the Executive Summary, procedures used in unification would theoretically permit roughly 10% of the voters of the Haines Borough to block unification even if the remaining 90% of the voters favored it.

Moreover, as also noted in the Executive Summary, the unification voting procedures make distinctions between certain arbitrary classes of voters, but fail to treat a myriad of other groups in a similar fashion. In the case of Haines, for example, residents of the Mud Bay Land Use Service Area could claim they, too, should have veto power over the majority of the voters in the Borough.

••••• k. Perception that the City of Haines is “apart from” rather than “a part of” the Haines Borough.

Some correspondents seem to lose sight of the fact that the City of Haines is part of the Haines Borough. They appear to disregard the fact that citizens of the City of Haines are full-fledged citizens of the Haines Borough. For example, Mr. Weishahn states as follows:

Governments and the Local Boundary Commission need to learn the lesson taught by business mergers. Good business mergers happen when the majority of shareholders of each separate company approve of the merger. When governments follow that model there is a beneficial enhancement that leads to a cohesive participatory citizenry.

To apply his own analogy to the pending proposal, what Mr. Weishahn actually advocates is that “shareholders” of the City of Haines should be allowed to vote on the “merger”, but that more than three-quarters of the “shareholders” of the Haines Borough should be

blocked from voting on the proposal. Mr. Weishahn wants to limit the right to vote by the Borough “shareholders” to just those 24% who are not also “shareholders” of the City of Haines.⁷⁸

••••• l. Perception that “the City” is deceitful, scheming, and unjust.

A small number of the correspondents assert that the City of Haines is untrustworthy, conniving, and that it initiated the Petition to somehow take unfair advantage of the ‘resources of the Haines Borough.’

Mr. Weishahn states that “it is imperative that the checks and balances of a borough government over and against the often inauthentic and deceptive attitude of the city government ... be promoted for the necessary true efficiency of an ideal that holds the best aspects of the Alaskan Spirit.”

⁷⁸ The 24% of the Borough “shareholders” are those who are not also “shareholders” of the City of Haines (i.e., those who are not City residents).

DCED finds such views to be unsupported by the record.⁷⁹ Perhaps the few critics who exhibit such rancor toward the City fail to perceive that consolidation will actually eliminate the Haines city government altogether. If they do realize such, then it seems that their distrust and antagonism is actually directed, unreasonably so, at the citizens of the City of Haines.

Those who exhibit or promote a “City versus Borough” mindset seem to overlook commonality of interests among all residents of the Haines Borough. The local governmental interests of the citizens of the Haines Borough extend well beyond education and taxation. For

many, those interests likely include public libraries, museums, and cultural facilities centers – none of which may legally be provided by a third class borough on an areawide basis.⁸⁰

Moreover, many citizens of the Haines Borough are likely to consider jobs (economic development), docks, boat harbors, planning, platting, land use regulation, control of hazardous substances, disaster planning, emergency response, emergency medical service, public parks, recreational facilities, cemeteries, and solid waste management as legitimate areawide local governmental interests. Most of those services are or have been provided in the past by the City of Haines.

The pending consolidation Petition provides that all of these functions would become areawide powers of the consolidated borough.

The few critics who express the view that the City is somehow taking advantage of others seem to selectively apply facts to fit their particular view. For example, the heavy preponderance of locally generated areawide revenues of the Haines Borough comes from “the City.” In fact, nearly two-thirds of the Borough’s areawide property tax revenues⁸¹ and approximately 95% of its sales tax revenues⁸² are derived from “the City” – an area comprising less than eight-tenths of one percent of the geographic area of the Haines Borough.

⁷⁹ The assertions are either readily refuted (as was the case with the assertion by the Respondent’s Representative that the City petitioned for consolidation in order to shift its debts to the Borough) or so nebulous as to preclude analysis.

⁸⁰ Relying on a liberal interpretation of the law, the Haines Borough provides such facilities under the guise of its power under AS 29.35.160 to establish, maintain, and operate “a system of public schools on an areawide basis as provided in AS 14.14.060.”

⁸¹ The area within the City of Haines accounted for 63.9% of the assessed value of the Haines Borough in 2000. That figure is approximately two-thirds of all taxable property in the Haines Borough.

⁸² From July 2000 to May of this year, the Borough collected \$565,912 in revenues from its 1.5% sales tax, 4% bed tax, and 4% tour tax. The Haines Borough Clerk roughly estimated on June 14, 2001 that about \$20,000 had been collected during the fiscal year from the Borough’s 4% bed tax and 4% tour tax. That leaves sales tax collections at \$545,912, which is equivalent to \$363,941 per 1% of Borough sales tax levied. During the same time, the Borough collected on behalf of the City of Haines \$1,369,757 from the City’s 4% sales tax levy. That is equivalent to \$342,439 per 1% of City sales tax levied. Since, with very minor exceptions, both local government levy sales taxes on the same items, 94% of the sales tax revenues of the Haines Borough come from sales within the corporate boundaries of the City of Haines.

Any characterization that such circumstances represent 'the Haines Borough taking unfair advantage of City resources' would, of course, be just as unfounded as the allegations leveled against the City of Haines by a few of the consolidation critics. The Haines Borough utilizes the revenues from its areawide property tax and sales taxes for areawide purposes that benefit all of the residents of the Haines Borough, including those living within the City of Haines.

Another example of the selective application of facts by a few of the critics exists with regard to the condemnation of the City both for its recent annexation and for the unilateral nature of the pending consolidation Petition. Critics who disparage the City of Haines for the 1999 legislative review annexation appear oblivious to the fact that the Haines Borough has also annexed areas in the past utilizing the legislative review method initiated by a unilateral petition (as have many of the 162 municipal governments in Alaska).

The Respondent Haines Borough's

Representative recently indicated that the Borough is strongly opposed to legislative review annexation. (See Gustavus Community Association, Meeting Minutes, February 1, 2001). That policy stance appears to be disingenuous, however, since the Haines Borough has undertaken legislative review annexations in the past.

Moreover, the Haines Borough continues today to reap very significant economic benefits for its past unilateral annexation efforts. The extension of the Borough's boundaries in 1975 to include Excursion Inlet and Tongass National Forest lands has resulted in several millions of dollars in national forest receipts, business fisheries tax payments, and property tax revenues for the Haines

Borough. It has enabled the Haines Borough to maintain fundamental services, keep taxes low, and create its permanent fund.

When asked earlier this year by residents of Gustavus, Hoonah, and Pelican why Excursion Inlet shouldn't be detached from the Haines Borough and included in a Icy Straits/Cross Borough, the representative from the Haines Borough offered the terse explanation "Because!"⁸³ (See Gustavus Community Association, Meeting Minutes, February 1, 2001.)

.....
m. Consolidation does not preclude new cities from forming.

Both Scott Carey and the Haines Borough argue that consolidation does not

⁸³ There has been a long-standing desire on the part of a number of those in Excursion Inlet, Gustavus, Hoonah, and adjacent communities to include Excursion Inlet in an Icy Straits/Cross Sound region borough if one is ever organized. A study of the feasibility of such a borough, funded by the City of Hoonah states:

While a compelling argument can be made that the social, cultural and economic ties between Excursion Inlet and other Glacier Bay Borough communities are much stronger than those between Excursion Inlet and Haines Borough, it is obvious that Haines Borough would mount a fight before the Local Boundary Commission to keep Excursion Inlet within its boundaries.

In February of this year, residents of the Icy Straits/Cross Sound area met in Gustavus to discuss borough formation and annexation.

preclude the formation of new city governments. That is correct. However, contrary to assertions, no structure “guarantees” that there will never be a new city government created within an organized borough, including a unified municipality. As a case in point, Port Alexander was once within the corporate boundaries of the unified City and Borough of Sitka. In 1974, however, Port Alexander was detached from the City and Borough of Sitka and was incorporated as a new city government.

Of course, it is impossible to accurately foresee the long-term nature of communities in the Haines Borough. However, DCED

maintains that consolidation provides far greater flexibility in addressing the long-term local governmental needs of a region as compared to unification.

2. Conclusions regarding the comments of the respondent and correspondents addressed here.

DCED finds no clear and compelling public policy arguments offered by the Respondent or correspondents that would serve as a legitimate basis for denial of the Petition.

N. Overall Conclusions and Recommendations.

In summary, DCED has concluded that the pending Petition for consolidation of the City of Haines and the Haines Borough satisfies all applicable legal standards. Moreover, there are fundamental public policy reasons that favor consolidation of the City of Haines and the Haines Borough.

Accordingly, DCED endorses consolidation of the City of Haines and the Haines Borough. To address technical issues outlined in the Preliminary Report, DCED recommends that the Petition be amended as follows:

1. To remedy inadvertent omissions in some or all appropriate parts of the Petition by recognizing that the Haines Borough currently operates the Solid Waste Management Service Area, Letnikof Subdivision Road Maintenance Service Area, and Riverview Drive Road Maintenance Service Area.
2. To provide that the Letnikof Subdivision Road Maintenance



Aerial view of Haines.

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| <p>Service Area and Riverview Drive Road Maintenance Service Area will remain in place after consolidation.</p> | <p>tourism promotion to the list of powers to be exercised within the Townsite Service Area.</p> | <p>Following the amendment of the Petition, DCED urges the Commission to approve the Petition and submit the matter to the voters of the Haines Borough for their consideration.</p> |
| <p>3. To provide that the Solid Waste Management Service Area will be dissolved and solid waste management will become an areawide power of the consolidated borough.</p> | <p>6. To add public works to the list of powers to be exercised in the Townsite Service Area.</p> | |
| <p>4. To delete economic development and tourism promotion from the list of areawide powers of the consolidated borough</p> | <p>In addition, DCED recommends that the Commission consider amending the Petition with regard to the composition and apportionment of the assembly of the proposed City and Borough of Haines if the Commission is provided with evidence that there is a compelling public policy basis for doing so.</p> | |
| <p>5. To add financing of capital improvements, along with economic development and</p> | | |

